

[DISCUSSION DRAFT]

1 **TITLE XII—ELECTRICITY**

2 **SEC. 1201. SHORT TITLE.**

3 This title may be cited as the “Electric Reliability
4 Act of 2005”.

5 **Subtitle A—Reliability Standards**

6 **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

7 (a) IN GENERAL.—Part II of the Federal Power Act
8 (16 U.S.C 824 et seq.) is amended by adding at the end
9 the following:

10 **“SEC. 215. ELECTRIC RELIABILITY.**

11 “(a) DEFINITIONS.—For purposes of this section:

12 “(1) The term ‘bulk-power system’ means—

13 “(A) facilities and control systems nec-
14 essary for operating an interconnected electric
15 energy transmission network (or any portion
16 thereof); and

17 “(B) electric energy from generation facili-
18 ties needed to maintain transmission system re-
19 liability.

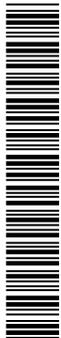
20 The term does not include facilities used in the local
21 distribution of electric energy.



1 “(2) The terms ‘Electric Reliability Organiza-
2 tion’ and ‘ERO’ mean the organization certified by
3 the Commission under subsection (c) the purpose of
4 which is to establish and enforce reliability stand-
5 ards for the bulk-power system, subject to Commis-
6 sion review.

7 “(3) The term ‘reliability standard’ means a re-
8 quirement, approved by the Commission under this
9 section, to provide for reliable operation of the bulk-
10 power system. The term includes requirements for
11 the operation of existing bulk-power system facilities
12 and the design of planned additions or modifications
13 to such facilities to the extent necessary to provide
14 for reliable operation of the bulk-power system, but
15 the term does not include any requirement to en-
16 large such facilities or to construct new transmission
17 capacity or generation capacity.

18 “(4) The term ‘reliable operation’ means oper-
19 ating the elements of the bulk-power system within
20 equipment and electric system thermal, voltage, and
21 stability limits so that instability, uncontrolled sepa-
22 ration, or cascading failures of such system will not
23 occur as a result of a sudden disturbance or unan-
24 ticipated failure of system elements.



1 “(5) The term ‘Interconnection’ means a geo-
2 graphic area in which the operation of bulk-power
3 system components is synchronized such that the
4 failure of 1 or more of such components may ad-
5 versely affect the ability of the operators of other
6 components within the system to maintain reliable
7 operation of the facilities within their control.

8 “(6) The term ‘transmission organization’
9 means a Regional Transmission Organization, Inde-
10 pendent System Operator, independent transmission
11 provider, or other transmission organization finally
12 approved by the Commission for the operation of
13 transmission facilities.

14 “(7) The term ‘regional entity’ means an entity
15 having enforcement authority pursuant to subsection
16 (e)(4).

17 “(b) JURISDICTION AND APPLICABILITY.—(1) The
18 Commission shall have jurisdiction, within the United
19 States, over the ERO certified by the Commission under
20 subsection (c), any regional entities, and all users, owners
21 and operators of the bulk-power system, including but not
22 limited to the entities described in section 201(f), for pur-
23 poses of approving reliability standards established under
24 this section and enforcing compliance with this section. All
25 users, owners and operators of the bulk-power system



1 shall comply with reliability standards that take effect
2 under this section.

3 “(2) The Commission shall issue a final rule to imple-
4 ment the requirements of this section not later than 180
5 days after the date of enactment of this section.

6 “(c) CERTIFICATION.—Following the issuance of a
7 Commission rule under subsection (b)(2), any person may
8 submit an application to the Commission for certification
9 as the Electric Reliability Organization. The Commission
10 may certify 1 such ERO if the Commission determines
11 that such ERO—

12 “(1) has the ability to develop and enforce, sub-
13 ject to subsection (e)(2), reliability standards that
14 provide for an adequate level of reliability of the
15 bulk-power system; and

16 “(2) has established rules that—

17 “(A) assure its independence of the users
18 and owners and operators of the bulk-power
19 system, while assuring fair stakeholder rep-
20 resentation in the selection of its directors and
21 balanced decisionmaking in any ERO com-
22 mittee or subordinate organizational structure;

23 “(B) allocate equitably reasonable dues,
24 fees, and other charges among end users for all
25 activities under this section;



1 “(C) provide fair and impartial procedures
2 for enforcement of reliability standards through
3 the imposition of penalties in accordance with
4 subsection (e) (including limitations on activi-
5 ties, functions, or operations, or other appro-
6 priate sanctions);

7 “(D) provide for reasonable notice and op-
8 portunity for public comment, due process,
9 openness, and balance of interests in developing
10 reliability standards and otherwise exercising its
11 duties; and

12 “(E) provide for taking, after certification,
13 appropriate steps to gain recognition in Canada
14 and Mexico.

15 The total amount of all dues, fees, and other charges
16 collected by the ERO in each of the fiscal years
17 2006 through 2015 and allocated under subpara-
18 graph (B) shall not exceed \$50,000,000.

19 “(d) RELIABILITY STANDARDS.—(1) The Electric
20 Reliability Organization shall file each reliability standard
21 or modification to a reliability standard that it proposes
22 to be made effective under this section with the Commis-
23 sion.

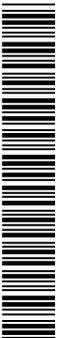
24 “(2) The Commission may approve, by rule or order,
25 a proposed reliability standard or modification to a reli-



1 ability standard if it determines that the standard is just,
2 reasonable, not unduly discriminatory or preferential, and
3 in the public interest. The Commission shall give due
4 weight to the technical expertise of the Electric Reliability
5 Organization with respect to the content of a proposed
6 standard or modification to a reliability standard and to
7 the technical expertise of a regional entity organized on
8 an Interconnection-wide basis with respect to a reliability
9 standard to be applicable within that Interconnection, but
10 shall not defer with respect to the effect of a standard
11 on competition. A proposed standard or modification shall
12 take effect upon approval by the Commission.

13 “(3) The Electric Reliability Organization shall
14 rebuttably presume that a proposal from a regional entity
15 organized on an Interconnection-wide basis for a reliability
16 standard or modification to a reliability standard to be ap-
17 plicable on an Interconnection-wide basis is just, reason-
18 able, and not unduly discriminatory or preferential, and
19 in the public interest.

20 “(4) The Commission shall remand to the Electric
21 Reliability Organization for further consideration a pro-
22 posed reliability standard or a modification to a reliability
23 standard that the Commission disapproves in whole or in
24 part.



1 “(5) The Commission, upon its own motion or upon
2 complaint, may order the Electric Reliability Organization
3 to submit to the Commission a proposed reliability stand-
4 ard or a modification to a reliability standard that ad-
5 dresses a specific matter if the Commission considers such
6 a new or modified reliability standard appropriate to carry
7 out this section.

8 “(6) The final rule adopted under subsection (b)(2)
9 shall include fair processes for the identification and time-
10 ly resolution of any conflict between a reliability standard
11 and any function, rule, order, tariff, rate schedule, or
12 agreement accepted, approved, or ordered by the Commis-
13 sion applicable to a transmission organization. Such trans-
14 mission organization shall continue to comply with such
15 function, rule, order, tariff, rate schedule or agreement ac-
16 cepted approved, or ordered by the Commission until—

17 “(A) the Commission finds a conflict exists be-
18 tween a reliability standard and any such provision;

19 “(B) the Commission orders a change to such
20 provision pursuant to section 206 of this part; and

21 “(C) the ordered change becomes effective
22 under this part.

23 If the Commission determines that a reliability standard
24 needs to be changed as a result of such a conflict, it shall
25 order the ERO to develop and file with the Commission



1 a modified reliability standard under paragraph (4) or (5)
2 of this subsection.

3 “(e) ENFORCEMENT.—(1) The ERO may impose,
4 subject to paragraph (2), a penalty on a user or owner
5 or operator of the bulk-power system for a violation of a
6 reliability standard approved by the Commission under
7 subsection (d) if the ERO, after notice and an opportunity
8 for a hearing—

9 “(A) finds that the user or owner or operator
10 has violated a reliability standard approved by the
11 Commission under subsection (d); and

12 “(B) files notice and the record of the pro-
13 ceeding with the Commission.

14 “(2) A penalty imposed under paragraph (1) may
15 take effect not earlier than the 31st day after the ERO
16 files with the Commission notice of the penalty and the
17 record of proceedings. Such penalty shall be subject to re-
18 view by the Commission, on its own motion or upon appli-
19 cation by the user, owner or operator that is the subject
20 of the penalty filed within 30 days after the date such
21 notice is filed with the Commission. Application to the
22 Commission for review, or the initiation of review by the
23 Commission on its own motion, shall not operate as a stay
24 of such penalty unless the Commission otherwise orders
25 upon its own motion or upon application by the user,

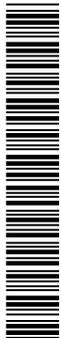


1 owner or operator that is the subject of such penalty. In
2 any proceeding to review a penalty imposed under para-
3 graph (1), the Commission, after notice and opportunity
4 for hearing (which hearing may consist solely of the record
5 before the ERO and opportunity for the presentation of
6 supporting reasons to affirm, modify, or set aside the pen-
7 alty), shall by order affirm, set aside, reinstate, or modify
8 the penalty, and, if appropriate, remand to the ERO for
9 further proceedings. The Commission shall implement ex-
10 pedited procedures for such hearings.

11 “(3) On its own motion or upon complaint, the Com-
12 mission may order compliance with a reliability standard
13 and may impose a penalty against a user or owner or oper-
14 ator of the bulk-power system if the Commission finds,
15 after notice and opportunity for a hearing, that the user
16 or owner or operator of the bulk-power system has en-
17 gaged or is about to engage in any acts or practices that
18 constitute or will constitute a violation of a reliability
19 standard.

20 “(4) The Commission shall issue regulations author-
21 izing the ERO to enter into an agreement to delegate au-
22 thority to a regional entity for the purpose of proposing
23 reliability standards to the ERO and enforcing reliability
24 standards under paragraph (1) if—

25 “(A) the regional entity is governed by—



1 “(i) an independent board;

2 “(ii) a balanced stakeholder board; or

3 “(iii) a combination independent and bal-
4 anced stakeholder board.

5 “(B) the regional entity otherwise satisfies the
6 provisions of subsection (c)(1) and (2); and

7 “(C) the agreement promotes effective and effi-
8 cient administration of bulk-power system reliability.

9 The Commission may modify such delegation. The ERO
10 and the Commission shall rebuttably presume that a pro-
11 posal for delegation to a regional entity organized on an
12 Interconnection-wide basis promotes effective and efficient
13 administration of bulk-power system reliability and should
14 be approved. Such regulation may provide that the Com-
15 mission may assign the ERO’s authority to enforce reli-
16 ability standards under paragraph (1) directly to a re-
17 gional entity consistent with the requirements of this para-
18 graph.

19 “(5) The Commission may take such action as is nec-
20 essary or appropriate against the ERO or a regional entity
21 to ensure compliance with a reliability standard or any
22 Commission order affecting the ERO or a regional entity.

23 “(6) Any penalty imposed under this section shall
24 bear a reasonable relation to the seriousness of the viola-
25 tion and shall take into consideration the efforts of such



1 user, owner, or operator to remedy the violation in a time-
2 ly manner.

3 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
4 TION RULES.—The Electric Reliability Organization shall
5 file with the Commission for approval any proposed rule
6 or proposed rule change, accompanied by an explanation
7 of its basis and purpose. The Commission, upon its own
8 motion or complaint, may propose a change to the rules
9 of the ERO. A proposed rule or proposed rule change shall
10 take effect upon a finding by the Commission, after notice
11 and opportunity for comment, that the change is just, rea-
12 sonable, not unduly discriminatory or preferential, is in
13 the public interest, and satisfies the requirements of sub-
14 section (c).

15 “(g) RELIABILITY REPORTS.—The ERO shall con-
16 duct periodic assessments of the reliability and adequacy
17 of the bulk-power system in North America.

18 “(h) COORDINATION WITH CANADA AND MEXICO.—
19 The President is urged to negotiate international agree-
20 ments with the governments of Canada and Mexico to pro-
21 vide for effective compliance with reliability standards and
22 the effectiveness of the ERO in the United States and
23 Canada or Mexico.



1 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
2 authority to develop and enforce compliance with reli-
3 ability standards for only the bulk-power system.

4 “(2) This section does not authorize the ERO or the
5 Commission to order the construction of additional gen-
6 eration or transmission capacity or to set and enforce com-
7 pliance with standards for adequacy or safety of electric
8 facilities or services.

9 “(3) Nothing in this section shall be construed to pre-
10 empt any authority of any State to take action to ensure
11 the safety, adequacy, and reliability of electric service
12 within that State, as long as such action is not incon-
13 sistent with any reliability standard.

14 “(4) Within 90 days of the application of the Electric
15 Reliability Organization or other affected party, and after
16 notice and opportunity for comment, the Commission shall
17 issue a final order determining whether a State action is
18 inconsistent with a reliability standard, taking into consid-
19 eration any recommendation of the ERO.

20 “(5) The Commission, after consultation with the
21 ERO and the State taking action, may stay the effective-
22 ness of any State action, pending the Commission’s
23 issuance of a final order.

24 “(j) REGIONAL ADVISORY BODIES.—The Commis-
25 sion shall establish a regional advisory body on the petition



1 of at least $\frac{2}{3}$ of the States within a region that have more
2 than $\frac{1}{2}$ of their electric load served within the region. A
3 regional advisory body shall be composed of 1 member
4 from each participating State in the region, appointed by
5 the Governor of each State, and may include representa-
6 tives of agencies, States, and provinces outside the United
7 States. A regional advisory body may provide advice to the
8 Electric Reliability Organization, a regional entity, or the
9 Commission regarding the governance of an existing or
10 proposed regional entity within the same region, whether
11 a standard proposed to apply within the region is just,
12 reasonable, not unduly discriminatory or preferential, and
13 in the public interest, whether fees proposed to be assessed
14 within the region are just, reasonable, not unduly discrimi-
15 natory or preferential, and in the public interest and any
16 other responsibilities requested by the Commission. The
17 Commission may give deference to the advice of any such
18 regional advisory body if that body is organized on an
19 Interconnection-wide basis.

20 “(k) ALASKA AND HAWAII.—The provisions of this
21 section do not apply to Alaska or Hawaii.”

22 (b) STATUS OF ERO.—The Electric Reliability Orga-
23 nization certified by the Federal Energy Regulatory Com-
24 mission under section 215(c) of the Federal Power Act
25 and any regional entity delegated enforcement authority



1 pursuant to section 215(e)(4) of that Act are not depart-
2 ments, agencies, or instrumentalities of the United States
3 Government.

4 (c) LIMITATION ON ANNUAL APPROPRIATIONS.—
5 There is authorized to be appropriated not more than
6 \$50,000,000 per year for fiscal years 2006 through 2015
7 for all activities under the amendment made by subsection
8 (a).

9 **Subtitle B—Transmission** 10 **Infrastructure Modernization**

11 **SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS-** 12 **MISSION FACILITIES.**

13 (a) AMENDMENT OF FEDERAL POWER ACT.—Part
14 II of the Federal Power Act is amended by adding at the
15 end the following:

16 **“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS-** 17 **MISSION FACILITIES.**

18 “(a) DESIGNATION OF NATIONAL INTEREST ELEC-
19 TRIC TRANSMISSION CORRIDORS.—

20 “(1) TRANSMISSION CONGESTION STUDY.—

21 Within 1 year after the enactment of this section,
22 and every 3 years thereafter, the Secretary of En-
23 ergy, in consultation with affected States, shall con-
24 duct a study of electric transmission congestion.

25 After considering alternatives and recommendations



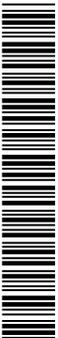
1 from interested parties, including an opportunity for
2 comment from affected States, the Secretary shall
3 issue a report, based on such study, which may des-
4 ignate any geographic area experiencing electric en-
5 ergy transmission capacity constraints or congestion
6 that adversely affects consumers as a national inter-
7 est electric transmission corridor. The Secretary
8 shall conduct the study and issue the report in con-
9 sultation with any appropriate regional entity ref-
10 erenced in section 215 of this Act.

11 “(2) CONSIDERATIONS.—In determining wheth-
12 er to designate a national interest electric trans-
13 mission corridor referred to in paragraph (1) under
14 this section, the Secretary may consider whether—

15 “(A) the economic vitality and development
16 of the corridor, or the end markets served by
17 the corridor, may be constrained by lack of ade-
18 quate or reasonably priced electricity;

19 “(B)(i) economic growth in the corridor, or
20 the end markets served by the corridor, may be
21 jeopardized by reliance on limited sources of en-
22 ergy; and

23 “(ii) a diversification of supply is war-
24 ranted;



1 “(C) the energy independence of the
2 United States would be served by the designa-
3 tion;

4 “(D) the designation would be in the inter-
5 est of national energy policy; and

6 “(E) the designation would enhance na-
7 tional defense and homeland security.

8 “(b) CONSTRUCTION PERMIT.—Except as provided
9 in subsection (i), the Commission is authorized, after no-
10 tice and an opportunity for hearing, to issue a permit or
11 permits for the construction or modification of electric
12 transmission facilities in a national interest electric trans-
13 mission corridor designated by the Secretary under sub-
14 section (a) if the Commission finds that—

15 “(1)(A) a State in which the transmission fa-
16 cilities are to be constructed or modified is without
17 authority to—

18 “(i) approve the siting of the facilities; or

19 “(ii) consider the interstate benefits ex-
20 pected to be achieved by the proposed construc-
21 tion or modification of transmission facilities in
22 the State;

23 “(B) the applicant for a permit is a transmit-
24 ting utility under this Act but does not qualify to
25 apply for a permit or siting approval for the pro-



1 posed project in a State because the applicant does
2 not serve end-use customers in the State; or

3 “(C) a State commission or other entity that
4 has authority to approve the siting of the facilities
5 has—

6 “(i) withheld approval for more than 1
7 year after the filing of an application pursuant
8 to applicable law seeking approval or 1 year
9 after the designation of the relevant national in-
10 terest electric transmission corridor, whichever
11 is later; or

12 “(ii) conditioned its approval in such a
13 manner that the proposed construction or modi-
14 fication will not significantly reduce trans-
15 mission congestion in interstate commerce or is
16 not economically feasible;

17 “(2) the facilities to be authorized by the per-
18 mit will be used for the transmission of electric en-
19 ergy in interstate commerce;

20 “(3) the proposed construction or modification
21 is consistent with the public interest;

22 “(4) the proposed construction or modification
23 will significantly reduce transmission congestion in
24 interstate commerce and protects or benefits con-
25 sumers; and



1 “(5) the proposed construction or modification
2 is consistent with sound national energy policy and
3 will enhance energy independence.

4 “(c) PERMIT APPLICATIONS.—Permit applications
5 under subsection (b) shall be made in writing to the Com-
6 mission. The Commission shall issue rules setting forth
7 the form of the application, the information to be con-
8 tained in the application, and the manner of service of no-
9 tice of the permit application upon interested persons.

10 “(d) COMMENTS.—In any proceeding before the
11 Commission under subsection (b), the Commission shall
12 afford each State in which a transmission facility covered
13 by the permit is or will be located, each affected Federal
14 agency and Indian tribe, private property owners, and
15 other interested persons, a reasonable opportunity to
16 present their views and recommendations with respect to
17 the need for and impact of a facility covered by the permit.

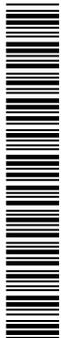
18 “(e) RIGHTS-OF-WAY.—In the case of a permit under
19 subsection (b) for electric transmission facilities to be lo-
20 cated on property other than property owned by the
21 United States or a State, if the permit holder cannot ac-
22 quire by contract, or is unable to agree with the owner
23 of the property to the compensation to be paid for, the
24 necessary right-of-way to construct or modify such trans-
25 mission facilities, the permit holder may acquire the right-



1 of-way by the exercise of the right of eminent domain in
2 the district court of the United States for the district in
3 which the property concerned is located, or in the appro-
4 priate court of the State in which the property is located.
5 The practice and procedure in any action or proceeding
6 for that purpose in the district court of the United States
7 shall conform as nearly as may be with the practice and
8 procedure in similar action or proceeding in the courts of
9 the State where the property is situated.

10 “(f) STATE LAW.—Nothing in this section shall pre-
11 clude any person from constructing or modifying any
12 transmission facility pursuant to State law.

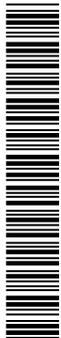
13 “(g) COMPENSATION.—Any exercise of eminent do-
14 main authority pursuant to this section shall be considered
15 a taking of private property for which just compensation
16 is due. Just compensation shall be an amount equal to
17 the full fair market value of the property taken on the
18 date of the exercise of eminent domain authority, except
19 that the compensation shall exceed fair market value if
20 necessary to make the landowner whole for decreases in
21 the value of any portion of the land not subject to eminent
22 domain. Any parcel of land acquired by eminent domain
23 under this subsection shall be transferred back to the
24 owner from whom it was acquired (or his heirs or assigns)
25 if the land is not used for the construction or modification



1 of electric transmission facilities within a reasonable pe-
2 riod of time after the acquisition. Other than construction,
3 modification, operation, or maintenance of electric trans-
4 mission facilities and related facilities, property acquired
5 under subsection (e) may not be used for any purpose (in-
6 cluding use for any heritage area, recreational trail, or
7 park) without the consent of the owner of the parcel from
8 whom the property was acquired (or the owner's heirs or
9 assigns).

10 “(h) COORDINATION OF FEDERAL AUTHORIZATIONS
11 FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—

12 “(1) LEAD AGENCY.—If an applicant, or pro-
13 spective applicant, for a Federal authorization re-
14 lated to an electric transmission or distribution facil-
15 ity so requests, the Department of Energy (DOE)
16 shall act as the lead agency for purposes of coordi-
17 nating all applicable Federal authorizations and re-
18 lated environmental reviews of the facility. For pur-
19 poses of this subsection, the term ‘Federal author-
20 ization’ means any authorization required under
21 Federal law in order to site a transmission or dis-
22 tribution facility, including but not limited to such
23 permits, special use authorizations, certifications,
24 opinions, or other approvals as may be required,
25 whether issued by a Federal or a State agency. To



1 the maximum extent practicable under applicable
2 Federal law, the Secretary of Energy shall coordi-
3 nate this Federal authorization and review process
4 with any Indian tribes, multi-State entities, and
5 State agencies that are responsible for conducting
6 any separate permitting and environmental reviews
7 of the facility, to ensure timely and efficient review
8 and permit decisions.

9 “(2) AUTHORITY TO SET DEADLINES.—As lead
10 agency, the Department of Energy, in consultation
11 with agencies responsible for Federal authorizations
12 and, as appropriate, with Indian tribes, multi-State
13 entities, and State agencies that are willing to co-
14 ordinate their own separate permitting and environ-
15 mental reviews with the Federal authorization and
16 environmental reviews, shall establish prompt and
17 binding intermediate milestones and ultimate dead-
18 lines for the review of, and Federal authorization de-
19 cisions relating to, the proposed facility. The Sec-
20 retary of Energy shall ensure that once an applica-
21 tion has been submitted with such data as the Sec-
22 retary considers necessary, all permit decisions and
23 related environmental reviews under all applicable
24 Federal laws shall be completed within 1 year or, if
25 a requirement of another provision of Federal law



1 makes this impossible, as soon thereafter as is prac-
2 ticable. The Secretary of Energy also shall provide
3 an expeditious pre-application mechanism for pro-
4 spective applicants to confer with the agencies in-
5 volved to have each such agency determine and com-
6 municate to the prospective applicant within 60 days
7 of when the prospective applicant submits a request
8 for such information concerning—

9 “(A) the likelihood of approval for a poten-
10 tial facility; and

11 “(B) key issues of concern to the agencies
12 and public.

13 “(3) CONSOLIDATED ENVIRONMENTAL REVIEW
14 AND RECORD OF DECISION.—As lead agency head,
15 the Secretary of Energy, in consultation with the af-
16 fected agencies, shall prepare a single environmental
17 review document, which shall be used as the basis
18 for all decisions on the proposed project under Fed-
19 eral law. The document may be an environmental as-
20 sessment or environmental impact statement under
21 the National Environmental Policy Act of 1969 if
22 warranted, or such other form of analysis as may be
23 warranted. The Secretary of Energy and the heads
24 of other agencies shall streamline the review and
25 permitting of transmission and distribution facilities



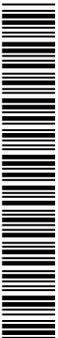
1 within corridors designated under section 503 of the
2 Federal Land Policy and Management Act (43
3 U.S.C. 1763) by fully taking into account prior anal-
4 yses and decisions relating to the corridors. Such
5 document shall include consideration by the relevant
6 agencies of any applicable criteria or other matters
7 as required under applicable laws.

8 “(4) APPEALS.—In the event that any agency
9 has denied a Federal authorization required for a
10 transmission or distribution facility, or has failed to
11 act by the deadline established by the Secretary pur-
12 suant to this section for deciding whether to issue
13 the authorization, the applicant or any State in
14 which the facility would be located may file an ap-
15 peal with the Secretary, who shall, in consultation
16 with the affected agency, review the denial or take
17 action on the pending application. Based on the
18 overall record and in consultation with the affected
19 agency, the Secretary may then either issue the nec-
20 essary authorization with any appropriate condi-
21 tions, or deny the application. The Secretary shall
22 issue a decision within 90 days of the filing of the
23 appeal. In making a decision under this paragraph,
24 the Secretary shall comply with applicable require-
25 ments of Federal law, including any requirements of



1 the Endangered Species Act, the Clean Water Act,
2 the National Forest Management Act, the National
3 Environmental Policy Act of 1969, and the Federal
4 Land Policy and Management Act.

5 “(5) CONFORMING REGULATIONS AND MEMO-
6 RANDA OF UNDERSTANDING.—Not later than 18
7 months after the date of enactment of this section,
8 the Secretary of Energy shall issue any regulations
9 necessary to implement this subsection. Not later
10 than 1 year after the date of enactment of this sec-
11 tion, the Secretary and the heads of all Federal
12 agencies with authority to issue Federal authoriza-
13 tions shall enter into Memoranda of Understanding
14 to ensure the timely and coordinated review and per-
15 mitting of electricity transmission and distribution
16 facilities. The head of each Federal agency with au-
17 thority to issue a Federal authorization shall des-
18 ignate a senior official responsible for, and dedicate
19 sufficient other staff and resources to ensure, full
20 implementation of the DOE regulations and any
21 Memoranda. Interested Indian tribes, multi-State
22 entities, and State agencies may enter such Memo-
23 randa of Understanding.



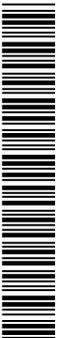
1 “(6) DURATION AND RENEWAL.—Each Federal
2 land use authorization for an electricity transmission
3 or distribution facility shall be issued—

4 “(A) for a duration, as determined by the
5 Secretary of Energy, commensurate with the
6 anticipated use of the facility, and

7 “(B) with appropriate authority to manage
8 the right-of-way for reliability and environ-
9 mental protection.

10 Upon the expiration of any such authorization (in-
11 cluding an authorization issued prior to enactment
12 of this section), the authorization shall be reviewed
13 for renewal taking fully into account reliance on
14 such electricity infrastructure, recognizing its impor-
15 tance for public health, safety and economic welfare
16 and as a legitimate use of Federal lands.

17 “(7) MAINTAINING AND ENHANCING THE
18 TRANSMISSION INFRASTRUCTURE.—In exercising the
19 responsibilities under this section, the Secretary of
20 Energy shall consult regularly with the Federal En-
21 ergy Regulatory Commission (FERC), FERC-ap-
22 proved electric reliability organizations (including re-
23 lated regional entities), and FERC-approved Re-
24 gional Transmission Organizations and Independent
25 System Operators.



1 “(i) INTERSTATE COMPACTS.—The consent of Con-
2 gress is hereby given for 3 or more contiguous States to
3 enter into an interstate compact, subject to approval by
4 Congress, establishing regional transmission siting agen-
5 cies to facilitate siting of future electric energy trans-
6 mission facilities within such States and to carry out the
7 electric energy transmission siting responsibilities of such
8 States. The Secretary of Energy may provide technical as-
9 sistance to regional transmission siting agencies estab-
10 lished under this subsection. Such regional transmission
11 siting agencies shall have the authority to review, certify,
12 and permit siting of transmission facilities, including fa-
13 cilities in national interest electric transmission corridors
14 (other than facilities on property owned by the United
15 States). The Commission shall have no authority to issue
16 a permit for the construction or modification of electric
17 transmission facilities within a State that is a party to
18 a compact, unless the members of a compact are in dis-
19 agreement and the Secretary makes, after notice and an
20 opportunity for a hearing, the finding described in section
21 (b)(1)(C).

22 “(j) SAVINGS CLAUSE.—Nothing in this section shall
23 be construed to affect any requirement of the environ-
24 mental laws of the United States, including, but not lim-
25 ited to, the National Environmental Policy Act of 1969.



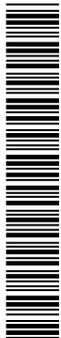
1 Subsection (h)(4) of this section shall not apply to any
2 Congressionally-designated components of the National
3 Wilderness Preservation System, the National Wild and
4 Scenic Rivers System, or the National Park system (in-
5 cluding National Monuments therein).

6 “(k) ERCOT.—This section shall not apply within
7 the area referred to in section 212(k)(2)(A).”.

8 (b) REPORTS TO CONGRESS ON CORRIDORS AND
9 RIGHTS OF WAY ON FEDERAL LANDS.—The Secretary of
10 the Interior, the Secretary of Energy, the Secretary of Ag-
11 riculture, and the Chairman of the Council on Environ-
12 mental Quality shall, within 90 days of the date of enact-
13 ment of this subsection, submit a joint report to Congress
14 identifying each of the following:

15 (1) All existing designated transmission and
16 distribution corridors on Federal land and the status
17 of work related to proposed transmission and dis-
18 tribution corridor designations under Title V of the
19 Federal Land Policy and Management Act (43
20 U.S.C. 1761 et. Seq.), the schedule for completing
21 such work, any impediments to completing the work,
22 and steps that Congress could take to expedite the
23 process.

24 (2) The number of pending applications to lo-
25 cate transmission and distribution facilities on Fed-



1 eral lands, key information relating to each such fa-
2 cility, how long each application has been pending,
3 the schedule for issuing a timely decision as to each
4 facility, and progress in incorporating existing and
5 new such rights-of-way into relevant land use and
6 resource management plans or their equivalent.

7 (3) The number of existing transmission and
8 distribution rights-of-way on Federal lands that will
9 come up for renewal within the following 5, 10, and
10 15 year periods, and a description of how the Secre-
11 taries plan to manage such renewals.

12 **SEC. 1222. THIRD-PARTY FINANCE.**

13 (a) EXISTING FACILITIES.—The Secretary of Energy
14 (hereinafter in this section referred to as the “Secretary”),
15 acting through the Administrator of the Western Area
16 Power Administration (hereinafter in this section referred
17 to as “WAPA”), or through the Administrator of the
18 Southwestern Power Administration (hereinafter in this
19 section referred to as “SWPA”), or both, may design, de-
20 velop, construct, operate, maintain, or own, or participate
21 with other entities in designing, developing, constructing,
22 operating, maintaining, or owning, an electric power
23 transmission facility and related facilities (“Project”)
24 needed to upgrade existing transmission facilities owned
25 by SWPA or WAPA if the Secretary of Energy, in con-



1 sultation with the applicable Administrator, determines
2 that the proposed Project—

3 (1)(A) is located in a national interest electric
4 transmission corridor designated under section
5 216(a) of the Federal Power Act and will reduce
6 congestion of electric transmission in interstate com-
7 merce; or

8 (B) is necessary to accommodate an actual or
9 projected increase in demand for electric trans-
10 mission capacity;

11 (2) is consistent with—

12 (A) transmission needs identified, in a
13 transmission expansion plan or otherwise, by
14 the appropriate Regional Transmission Organi-
15 zation or Independent System Operator (as de-
16 fined in the Federal Power Act), if any, or ap-
17 proved regional reliability organization; and

18 (B) efficient and reliable operation of the
19 transmission grid; and

20 (3) would be operated in conformance with pru-
21 dent utility practice.

22 (b) NEW FACILITIES.—The Secretary, acting
23 through WAPA or SWPA, or both, may design, develop,
24 construct, operate, maintain, or own, or participate with
25 other entities in designing, developing, constructing, oper-



1 ating, maintaining, or owning, a new electric power trans-
2 mission facility and related facilities (“Project”) located
3 within any State in which WAPA or SWPA operates if
4 the Secretary, in consultation with the applicable Adminis-
5 trator, determines that the proposed Project—

6 (1)(A) is located in an area designated under
7 section 216(a) of the Federal Power Act and will re-
8 duce congestion of electric transmission in interstate
9 commerce; or

10 (B) is necessary to accommodate an actual or
11 projected increase in demand for electric trans-
12 mission capacity;

13 (2) is consistent with—

14 (A) transmission needs identified, in a
15 transmission expansion plan or otherwise, by
16 the appropriate Regional Transmission Organi-
17 zation or Independent System Operator, if any,
18 or approved regional reliability organization;
19 and

20 (B) efficient and reliable operation of the
21 transmission grid;

22 (3) will be operated in conformance with pru-
23 dent utility practice;

24 (4) will be operated by, or in conformance with
25 the rules of, the appropriate (A) Regional Trans-



1 mission Organization or Independent System Oper-
2 ator, if any, or (B) if such an organization does not
3 exist, regional reliability organization; and

4 (5) will not duplicate the functions of existing
5 transmission facilities or proposed facilities which
6 are the subject of ongoing or approved siting and re-
7 lated permitting proceedings.

8 (c) OTHER FUNDS.—

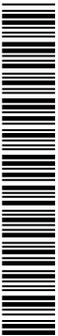
9 (1) IN GENERAL.—In carrying out a Project
10 under subsection (a) or (b), the Secretary may ac-
11 cept and use funds contributed by another entity for
12 the purpose of carrying out the Project.

13 (2) AVAILABILITY.—The contributed funds
14 shall be available for expenditure for the purpose of
15 carrying out the Project—

16 (A) without fiscal year limitation; and

17 (B) as if the funds had been appropriated
18 specifically for that Project.

19 (3) ALLOCATION OF COSTS.—In carrying out a
20 Project under subsection (a) or (b), any costs of the
21 Project not paid for by contributions from another
22 entity shall be collected through rates charged to
23 customers using the new transmission capability pro-
24 vided by the Project and allocated equitably among



1 these project beneficiaries using the new trans-
2 mission capability.

3 (d) RELATIONSHIP TO OTHER LAWS.—Nothing in
4 this section affects any requirement of—

5 (1) any Federal environmental law, including
6 the National Environmental Policy Act of 1969 (42
7 U.S.C. 4321 et seq.);

8 (2) any Federal or State law relating to the
9 siting of energy facilities; or

10 (3) any existing authorizing statutes.

11 (e) SAVINGS CLAUSE.—Nothing in this section shall
12 constrain or restrict an Administrator in the utilization
13 of other authority delegated to the Administrator of
14 WAPA or SWPA.

15 (f) SECRETARIAL DETERMINATIONS.—Any deter-
16 mination made pursuant to subsections (a) or (b) shall
17 be based on findings by the Secretary using the best avail-
18 able data.

19 (g) MAXIMUM FUNDING AMOUNT.—The Secretary
20 shall not accept and use more than \$100,000,000 under
21 subsection (c)(1) for the period encompassing fiscal years
22 2006 through 2015.

23 **SEC. 1223. TRANSMISSION SYSTEM MONITORING.**

24 Within 6 months after the date of enactment of this
25 Act, the Secretary of Energy and the Federal Energy Reg-



1 ulatory Commission shall study and report to Congress on
2 the steps which must be taken to establish a system to
3 make available to all transmission system owners and Re-
4 gional Transmission Organizations (as defined in the Fed-
5 eral Power Act) within the Eastern and Western Inter-
6 connections real-time information on the functional status
7 of all transmission lines within such Interconnections. In
8 such study, the Commission shall assess technical means
9 for implementing such transmission information system
10 and identify the steps the Commission or Congress must
11 take to require the implementation of such system.

12 **SEC. 1224. ADVANCED TRANSMISSION TECHNOLOGIES.**

13 (a) **AUTHORITY.**—The Federal Energy Regulatory
14 Commission, in the exercise of its authorities under the
15 Federal Power Act and the Public Utility Regulatory Poli-
16 cies Act of 1978, shall encourage the deployment of ad-
17 vanced transmission technologies.

18 (b) **DEFINITION.**—For the purposes of this section,
19 the term “advanced transmission technologies” means
20 technologies that increase the capacity, efficiency, or reli-
21 ability of existing or new transmission facilities, including,
22 but not limited to—

23 (1) high-temperature lines (including super-
24 conducting cables);

25 (2) underground cables;



- 1 (3) advanced conductor technology (including
- 2 advanced composite conductors, high-temperature
- 3 low-sag conductors, and fiber optic temperature
- 4 sensing conductors);
- 5 (4) high-capacity ceramic electric wire, connec-
- 6 tors, and insulators;
- 7 (5) optimized transmission line configurations
- 8 (including multiple phased transmission lines);
- 9 (6) modular equipment;
- 10 (7) wireless power transmission;
- 11 (8) ultra-high voltage lines;
- 12 (9) high-voltage DC technology;
- 13 (10) flexible AC transmission systems;
- 14 (11) energy storage devices (including pumped
- 15 hydro, compressed air, superconducting magnetic en-
- 16 ergy storage, flywheels, and batteries);
- 17 (12) controllable load;
- 18 (13) distributed generation (including PV, fuel
- 19 cells, microturbines);
- 20 (14) enhanced power device monitoring;
- 21 (15) direct system state sensors;
- 22 (16) fiber optic technologies;
- 23 (17) power electronics and related software (in-
- 24 cluding real time monitoring and analytical soft-
- 25 ware); and



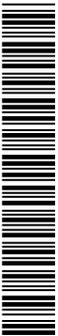
1 (18) any other technologies the Commission
2 considers appropriate.

3 (c) **OBSOLETE OR IMPRACTICABLE TECH-**
4 **NOLOGIES.**—The Commission is authorized to cease en-
5 couraging the deployment of any technology described in
6 this section on a finding that such technology has been
7 rendered obsolete or otherwise impracticable to deploy.

8 **SEC. 1225. ELECTRIC TRANSMISSION AND DISTRIBUTION**
9 **PROGRAMS.**

10 (a) **ELECTRIC TRANSMISSION AND DISTRIBUTION**
11 **PROGRAM.**—The Secretary of Energy (hereinafter in this
12 section referred to as the “Secretary”) acting through the
13 Director of the Office of Electric Transmission and Dis-
14 tribution shall establish a comprehensive research, devel-
15 opment, demonstration and commercial application pro-
16 gram to promote improved reliability and efficiency of
17 electrical transmission and distribution systems. This pro-
18 gram shall include—

19 (1) advanced energy delivery and storage tech-
20 nologies, materials, and systems, including new
21 transmission technologies, such as flexible alter-
22 nating current transmission systems, composite con-
23 ductor materials and other technologies that enhance
24 reliability, operational flexibility, or power-carrying
25 capability;



1 (2) advanced grid reliability and efficiency tech-
2 nology development;

3 (3) technologies contributing to significant load
4 reductions;

5 (4) advanced metering, load management, and
6 control technologies;

7 (5) technologies to enhance existing grid compo-
8 nents;

9 (6) the development and use of high-tempera-
10 ture superconductors to—

11 (A) enhance the reliability, operational
12 flexibility, or power-carrying capability of elec-
13 tric transmission or distribution systems; or

14 (B) increase the efficiency of electric en-
15 ergy generation, transmission, distribution, or
16 storage systems;

17 (7) integration of power systems, including sys-
18 tems to deliver high-quality electric power, electric
19 power reliability, and combined heat and power;

20 (8) supply of electricity to the power grid by
21 small scale, distributed and residential-based power
22 generators;

23 (9) the development and use of advanced grid
24 design, operation and planning tools;



1 (10) any other infrastructure technologies, as
2 appropriate; and

3 (11) technology transfer and education.

4 (b) PROGRAM PLAN.—Not later than 1 year after the
5 date of the enactment of this legislation, the Secretary,
6 in consultation with other appropriate Federal agencies,
7 shall prepare and transmit to Congress a 5-year program
8 plan to guide activities under this section. In preparing
9 the program plan, the Secretary may consult with utilities,
10 energy services providers, manufacturers, institutions of
11 higher education, other appropriate State and local agen-
12 cies, environmental organizations, professional and tech-
13 nical societies, and any other persons the Secretary con-
14 siders appropriate.

15 (c) IMPLEMENTATION.—The Secretary shall consider
16 implementing this program using a consortium of indus-
17 try, university and national laboratory participants.

18 (d) REPORT.—Not later than 2 years after the trans-
19 mittal of the plan under subsection (b), the Secretary shall
20 transmit a report to Congress describing the progress
21 made under this section and identifying any additional re-
22 sources needed to continue the development and commer-
23 cial application of transmission and distribution infra-
24 structure technologies.

25 (e) POWER DELIVERY RESEARCH INITIATIVE.—



1 (1) IN GENERAL.—The Secretary shall establish
2 a research, development, demonstration, and com-
3 mercial application initiative specifically focused on
4 power delivery utilizing components incorporating
5 high temperature superconductivity.

6 (2) GOALS.—The goals of this initiative shall be
7 to—

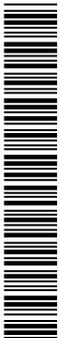
8 (A) establish facilities to develop high tem-
9 perature superconductivity power applications
10 in partnership with manufacturers and utilities;

11 (B) provide technical leadership for estab-
12 lishing reliability for high temperature super-
13 conductivity power applications including suit-
14 able modeling and analysis;

15 (C) facilitate commercial transition toward
16 direct current power transmission, storage, and
17 use for high power systems utilizing high tem-
18 perature superconductivity; and

19 (D) facilitate the integration of very low
20 impedance high temperature superconducting
21 wires and cables in existing electric networks to
22 improve system performance, power flow control
23 and reliability.

24 (3) REQUIREMENTS.—The initiative shall
25 include—



1 (A) feasibility analysis, planning, research,
2 and design to construct demonstrations of
3 superconducting links in high power, direct cur-
4 rent and controllable alternating current trans-
5 mission systems;

6 (B) public-private partnerships to dem-
7 onstrate deployment of high temperature super-
8 conducting cable into testbeds simulating a re-
9 alistic transmission grid and under varying
10 transmission conditions, including actual grid
11 insertions; and

12 (C) testbeds developed in cooperation with
13 national laboratories, industries, and univer-
14 sities to demonstrate these technologies, pre-
15 pare the technologies for commercial introduc-
16 tion, and address cost or performance road-
17 blocks to successful commercial use.

18 (4) AUTHORIZATION OF APPROPRIATIONS.—For
19 purposes of carrying out this subsection, there are
20 authorized to be appropriated—

21 (A) for fiscal year 2006, \$15,000,000;

22 (B) for fiscal year 2007, \$20,000,000;

23 (C) for fiscal year 2008, \$30,000,000;

24 (D) for fiscal year 2009, \$35,000,000; and

25 (E) for fiscal year 2010, \$40,000,000.



1 **SEC. 1226. ADVANCED POWER SYSTEM TECHNOLOGY IN-**
2 **CENTIVE PROGRAM.**

3 (a) PROGRAM.—The Secretary of Energy is author-
4 ized to establish an Advanced Power System Technology
5 Incentive Program to support the deployment of certain
6 advanced power system technologies and to improve and
7 protect certain critical governmental, industrial, and com-
8 mercial processes. Funds provided under this section shall
9 be used by the Secretary to make incentive payments to
10 eligible owners or operators of advanced power system
11 technologies to increase power generation through en-
12 hanced operational, economic, and environmental perform-
13 ance. Payments under this section may only be made upon
14 receipt by the Secretary of an incentive payment applica-
15 tion establishing an applicant as either—

16 (1) a qualifying advanced power system tech-
17 nology facility; or

18 (2) a qualifying security and assured power fa-
19 cility.

20 (b) INCENTIVES.—Subject to availability of funds, a
21 payment of 1.8 cents per kilowatt-hour shall be paid to
22 the owner or operator of a qualifying advanced power sys-
23 tem technology facility under this section for electricity
24 generated at such facility. An additional 0.7 cents per kilo-
25 watt-hour shall be paid to the owner or operator of a quali-
26 fying security and assured power facility for electricity



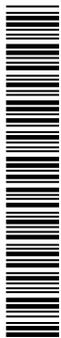
1 generated at such facility. Any facility qualifying under
2 this section shall be eligible for an incentive payment for
3 up to, but not more than, the first 10,000,000 kilowatt-
4 hours produced in any fiscal year.

5 (c) ELIGIBILITY.—For purposes of this section:

6 (1) QUALIFYING ADVANCED POWER SYSTEM
7 TECHNOLOGY FACILITY.—The term “qualifying ad-
8 vanced power system technology facility” means a
9 facility using an advanced fuel cell, turbine, or hy-
10 brid power system or power storage system to gen-
11 erate or store electric energy.

12 (2) QUALIFYING SECURITY AND ASSURED
13 POWER FACILITY.—The term “qualifying security
14 and assured power facility” means a qualifying ad-
15 vanced power system technology facility determined
16 by the Secretary of Energy, in consultation with the
17 Secretary of Homeland Security, to be in critical
18 need of secure, reliable, rapidly available, high-qual-
19 ity power for critical governmental, industrial, or
20 commercial applications.

21 (d) AUTHORIZATION.—There are authorized to be ap-
22 propriated to the Secretary of Energy for the purposes
23 of this section, \$10,000,000 for each of the fiscal years
24 2006 through 2012.



1 **SEC. 1227. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
2 **TRIBUTION.**

3 (a) CREATION OF AN OFFICE OF ELECTRIC TRANS-
4 MISSION AND DISTRIBUTION.—Title II of the Department
5 of Energy Organization Act (42 U.S.C. 7131 et seq.) (as
6 amended by section 502(a) of this Act) is amended by in-
7 serting the following after section 217, as added by title
8 V of this Act:

9 **“SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
10 **TRIBUTION.**

11 “(a) ESTABLISHMENT.—There is established within
12 the Department an Office of Electric Transmission and
13 Distribution. This Office shall be headed by a Director,
14 subject to the authority of the Secretary. The Director
15 shall be appointed by the Secretary. The Director shall
16 be compensated at the annual rate prescribed for level IV
17 of the Executive Schedule under section 5315 of title 5,
18 United States Code.

19 “(b) DIRECTOR.—The Director shall—

20 “(1) coordinate and develop a comprehensive,
21 multi-year strategy to improve the Nation’s elec-
22 tricity transmission and distribution;

23 “(2) implement or, where appropriate, coordi-
24 nate the implementation of, the recommendations
25 made in the Secretary’s May 2002 National Trans-
26 mission Grid Study;



1 “(3) oversee research, development, and dem-
2 onstration to support Federal energy policy related
3 to electricity transmission and distribution;

4 “(4) grant authorizations for electricity import
5 and export pursuant to section 202(c), (d), (e), and
6 (f) of the Federal Power Act (16 U.S.C. 824a);

7 “(5) perform other functions, assigned by the
8 Secretary, related to electricity transmission and dis-
9 tribution; and

10 “(6) develop programs for workforce training in
11 power and transmission engineering.”.

12 (b) CONFORMING AMENDMENTS.—(1) The table of
13 contents of the Department of Energy Organization Act
14 (42 U.S.C. 7101 note) is amended by inserting after the
15 item relating to section 217 the following new item:

 “Sec. 218. Office of Electric Transmission and Distribution.”.

16 (2) Section 5315 of title 5, United States Code, is
17 amended by inserting after the item relating to “Inspector
18 General, Department of Energy.” the following:

19 “Director, Office of Electric Transmission and
20 Distribution, Department of Energy.”.



1 **Subtitle C—Transmission**
2 **Operation Improvements**

3 **SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.**

4 Part II of the Federal Power Act (16 U.S.C. 824 et
5 seq.) is amended by inserting after section 211 the fol-
6 lowing new section:

7 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-**
8 **TING UTILITIES.**

9 “(a) TRANSMISSION SERVICES.—Subject to section
10 212(h), the Commission may, by rule or order, require an
11 unregulated transmitting utility to provide transmission
12 services—

13 “(1) at rates that are comparable to those that
14 the unregulated transmitting utility charges itself;
15 and

16 “(2) on terms and conditions (not relating to
17 rates) that are comparable to those under which
18 such unregulated transmitting utility provides trans-
19 mission services to itself and that are not unduly
20 discriminatory or preferential.

21 “(b) EXEMPTION.—The Commission shall exempt
22 from any rule or order under this section any unregulated
23 transmitting utility that—

24 “(1) sells no more than 4,000,000 megawatt
25 hours of electricity per year; or



1 “(2) does not own or operate any transmission
2 facilities that are necessary for operating an inter-
3 connected transmission system (or any portion
4 thereof); or

5 “(3) meets other criteria the Commission deter-
6 mines to be in the public interest.

7 “(c) LOCAL DISTRIBUTION FACILITIES.—The re-
8 quirements of subsection (a) shall not apply to facilities
9 used in local distribution.

10 “(d) EXEMPTION TERMINATION.—Whenever the
11 Commission, after an evidentiary hearing held upon a
12 complaint and after giving consideration to reliability
13 standards established under section 215, finds on the
14 basis of a preponderance of the evidence that any exemp-
15 tion granted pursuant to subsection (b) unreasonably im-
16 pairs the continued reliability of an interconnected trans-
17 mission system, it shall revoke the exemption granted to
18 that transmitting utility.

19 “(e) APPLICATION TO UNREGULATED TRANSMIT-
20 TING UTILITIES.—The rate changing procedures applica-
21 ble to public utilities under subsections (c) and (d) of sec-
22 tion 205 are applicable to unregulated transmitting utili-
23 ties for purposes of this section.

24 “(f) REMAND.—In exercising its authority under
25 paragraph (1) of subsection (a), the Commission may re-



1 mand transmission rates to an unregulated transmitting
2 utility for review and revision where necessary to meet the
3 requirements of subsection (a).

4 “(g) OTHER REQUESTS.—The provision of trans-
5 mission services under subsection (a) does not preclude a
6 request for transmission services under section 211.

7 “(h) LIMITATION.—The Commission may not require
8 a State or municipality to take action under this section
9 that would violate a private activity bond rule for purposes
10 of section 141 of the Internal Revenue Code of 1986 (26
11 U.S.C. 141).

12 “(i) TRANSFER OF CONTROL OF TRANSMITTING FA-
13 CILITIES.—Nothing in this section authorizes the Commis-
14 sion to require an unregulated transmitting utility to
15 transfer control or operational control of its transmitting
16 facilities to an RTO or any other Commission-approved
17 independent transmission organization designated to pro-
18 vide nondiscriminatory transmission access.

19 “(j) DEFINITION.—For purposes of this section, the
20 term ‘unregulated transmitting utility’ means an entity
21 that—

22 “(1) owns or operates facilities used for the
23 transmission of electric energy in interstate com-
24 merce; and

25 “(2) is an entity described in section 201(f).”.



1 **SEC. 1232. SENSE OF CONGRESS ON REGIONAL TRANS-**
2 **MISSION ORGANIZATIONS.**

3 It is the sense of Congress that, in order to promote
4 fair, open access to electric transmission service, benefit
5 retail consumers, facilitate wholesale competition, improve
6 efficiencies in transmission grid management, promote
7 grid reliability, remove opportunities for unduly discrimi-
8 natory or preferential transmission practices, and provide
9 for the efficient development of transmission infrastruc-
10 ture needed to meet the growing demands of competitive
11 wholesale power markets, all transmitting utilities in inter-
12 state commerce should voluntarily become members of Re-
13 gional Transmission Organizations as defined in section
14 3 of the Federal Power Act.

15 **SEC. 1233. REGIONAL TRANSMISSION ORGANIZATION AP-**
16 **PLICATIONS PROGRESS REPORT.**

17 Not later than 120 days after the date of enactment
18 of this section, the Federal Energy Regulatory Commis-
19 sion shall submit to Congress a report containing each of
20 the following:

- 21 (1) A list of all regional transmission organiza-
22 tion applications filed at the Commission pursuant
23 to subpart F of part 35 of title 18, Code of Federal
24 Regulations (in this section referred to as “Order
25 No. 2000”), including an identification of each pub-
26 lic utility and other entity included within the pro-



1 posed membership of the regional transmission orga-
2 nization.

3 (2) A brief description of the status of each
4 pending regional transmission organization applica-
5 tion, including a precise explanation of how each
6 fails to comply with the minimal requirements of
7 Order No. 2000 and what steps need to be taken to
8 bring each application into such compliance.

9 (3) For any application that has not been fi-
10 nally approved by the Commission, a detailed de-
11 scription of every aspect of the application that the
12 Commission has determined does not conform to the
13 requirements of Order No. 2000.

14 (4) For any application that has not been fi-
15 nally approved by the Commission, an explanation
16 by the Commission of why the items described pur-
17 suant to paragraph (3) constitute material non-
18 compliance with the requirements of the Commis-
19 sion's Order No. 2000 sufficient to justify denial of
20 approval by the Commission.

21 (5) For all regional transmission organization
22 applications filed pursuant to the Commission's
23 Order No. 2000, whether finally approved or not—



1 (A) a discussion of that regional trans-
2 mission organization's efforts to minimize rate
3 seams between itself and—

4 (i) other regional transmission organi-
5 zations; and

6 (ii) entities not participating in a re-
7 gional transmission organization;

8 (B) a discussion of the impact of such
9 seams on consumers and wholesale competition;
10 and

11 (C) a discussion of minimizing cost-shifting
12 on consumers.

13 **SEC. 1234. FEDERAL UTILITY PARTICIPATION IN REGIONAL**
14 **TRANSMISSION ORGANIZATIONS.**

15 (a) DEFINITIONS.—For purposes of this section—

16 (1) APPROPRIATE FEDERAL REGULATORY AU-
17 THORITY.—The term “appropriate Federal regu-
18 latory authority” means—

19 (A) with respect to a Federal power mar-
20 keting agency (as defined in the Federal Power
21 Act), the Secretary of Energy, except that the
22 Secretary may designate the Administrator of a
23 Federal power marketing agency to act as the
24 appropriate Federal regulatory authority with



1 respect to the transmission system of that Fed-
2 eral power marketing agency; and

3 (B) with respect to the Tennessee Valley
4 Authority, the Board of Directors of the Ten-
5 nessee Valley Authority.

6 (2) FEDERAL UTILITY.—The term “Federal
7 utility” means a Federal power marketing agency or
8 the Tennessee Valley Authority.

9 (3) TRANSMISSION SYSTEM.—The term “trans-
10 mission system” means electric transmission facili-
11 ties owned, leased, or contracted for by the United
12 States and operated by a Federal utility.

13 (b) TRANSFER.—The appropriate Federal regulatory
14 authority is authorized to enter into a contract, agreement
15 or other arrangement transferring control and use of all
16 or part of the Federal utility’s transmission system to an
17 RTO or ISO (as defined in the Federal Power Act), ap-
18 proved by the Federal Energy Regulatory Commission.

19 Such contract, agreement or arrangement shall include—

20 (1) performance standards for operation and
21 use of the transmission system that the head of the
22 Federal utility determines necessary or appropriate,
23 including standards that assure recovery of all the
24 Federal utility’s costs and expenses related to the
25 transmission facilities that are the subject of the



1 contract, agreement or other arrangement; consist-
2 ency with existing contracts and third-party financ-
3 ing arrangements; and consistency with said Federal
4 utility's statutory authorities, obligations, and limi-
5 tations;

6 (2) provisions for monitoring and oversight by
7 the Federal utility of the RTO's or ISO's fulfillment
8 of the terms and conditions of the contract, agree-
9 ment or other arrangement, including a provision for
10 the resolution of disputes through arbitration or
11 other means with the regional transmission organi-
12 zation or with other participants, notwithstanding
13 the obligations and limitations of any other law re-
14 garding arbitration; and

15 (3) a provision that allows the Federal utility to
16 withdraw from the RTO or ISO and terminate the
17 contract, agreement or other arrangement in accord-
18 ance with its terms.

19 Neither this section, actions taken pursuant to it, nor any
20 other transaction of a Federal utility using an RTO or
21 ISO shall confer upon the Federal Energy Regulatory
22 Commission jurisdiction or authority over the Federal util-
23 ity's electric generation assets, electric capacity or energy
24 that the Federal utility is authorized by law to market,
25 or the Federal utility's power sales activities.



1 (c) EXISTING STATUTORY AND OTHER OBLIGA-
2 TIONS.—

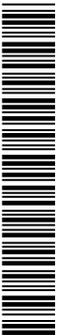
3 (1) SYSTEM OPERATION REQUIREMENTS.—No
4 statutory provision requiring or authorizing a Fed-
5 eral utility to transmit electric power or to construct,
6 operate or maintain its transmission system shall be
7 construed to prohibit a transfer of control and use
8 of its transmission system pursuant to, and subject
9 to all requirements of subsection (b).

10 (2) OTHER OBLIGATIONS.—This subsection
11 shall not be construed to—

12 (A) suspend, or exempt any Federal utility
13 from, any provision of existing Federal law, in-
14 cluding but not limited to any requirement or
15 direction relating to the use of the Federal util-
16 ity's transmission system, environmental protec-
17 tion, fish and wildlife protection, flood control,
18 navigation, water delivery, or recreation; or

19 (B) authorize abrogation of any contract
20 or treaty obligation.

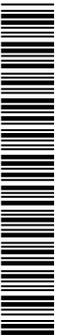
21 (3) REPEAL.—Section 311 of title III of Appen-
22 dix B of the Act of October 27, 2000 (P.L. 106-
23 377, section 1(a)(2); 114 Stat. 1441, 1441A-80; 16
24 U.S.C. 824n) is repealed.



1 **SEC. 1235. STANDARD MARKET DESIGN.**

2 (a) REMAND.—The Commission’s proposed rule-
3 making entitled “Remedying Undue Discrimination
4 through Open Access Transmission Service and Standard
5 Electricity Market Design” (Docket No. RM01–12–000)
6 (“SMD NOPR”) is remanded to the Commission for re-
7 consideration. No final rule mandating a standard elec-
8 tricity market design pursuant to the proposed rule-
9 making, including any rule or order of general applica-
10 bility within the scope of the proposed rulemaking, may
11 be issued before October 31, 2006, or take effect before
12 December 31, 2006. Any final rule issued by the Commis-
13 sion pursuant to the proposed rulemaking shall be pre-
14 ceded by a second notice of proposed rulemaking issued
15 after the date of enactment of this Act and an opportunity
16 for public comment.

17 (b) SAVINGS CLAUSE.—This section shall not be con-
18 strued to modify or diminish any authority or obligation
19 the Commission has under this Act, the Federal Power
20 Act, or other applicable law, including, but not limited to,
21 any authority to—



22 (1) issue any rule or order (of general or par-
23 ticular applicability) pursuant to any such authority
24 or obligation; or

25 (2) act on a filing or filings by 1 or more trans-
26 mitting utilities for the voluntary formation of a Re-

1 regional Transmission Organization or Independent
2 System Operator (as defined in the Federal Power
3 Act) (and related market structures or rules) or vol-
4 untary modification of an existing Regional Trans-
5 mission Organization or Independent System Oper-
6 ator (and related market structures or rules).

7 **SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.**

8 Part II of the Federal Power Act (16 U.S.C. 824 et
9 seq.) is amended by adding at the end the following:

10 **“SEC. 217. NATIVE LOAD SERVICE OBLIGATION.**

11 “(a) MEETING SERVICE OBLIGATIONS.—(1) Any
12 load-serving entity that, as of the date of enactment of
13 this section—

14 “(A) owns generation facilities, markets the
15 output of Federal generation facilities, or holds
16 rights under 1 or more wholesale contracts to pur-
17 chase electric energy, for the purpose of meeting a
18 service obligation, and

19 “(B) by reason of ownership of transmission fa-
20 cilities, or 1 or more contracts or service agreements
21 for firm transmission service, holds firm trans-
22 mission rights for delivery of the output of such gen-
23 eration facilities or such purchased energy to meet
24 such service obligation,



1 is entitled to use such firm transmission rights, or, equiva-
2 lent tradable or financial transmission rights, in order to
3 deliver such output or purchased energy, or the output of
4 other generating facilities or purchased energy to the ex-
5 tent deliverable using such rights, to the extent required
6 to meet its service obligation.

7 “(2) To the extent that all or a portion of the service
8 obligation covered by such firm transmission rights or
9 equivalent tradable or financial transmission rights is
10 transferred to another load-serving entity, the successor
11 load-serving entity shall be entitled to use the firm trans-
12 mission rights or equivalent tradable or financial trans-
13 mission rights associated with the transferred service obli-
14 gation. Subsequent transfers to another load-serving enti-
15 ty, or back to the original load-serving entity, shall be enti-
16 tled to the same rights.

17 “(3) The Commission shall exercise its authority
18 under this Act in a manner that facilitates the planning
19 and expansion of transmission facilities to meet the rea-
20 sonable needs of load-serving entities to satisfy their serv-
21 ice obligations.

22 “(b) ALLOCATION OF TRANSMISSION RIGHTS.—
23 Nothing in this section shall affect any methodology ap-
24 proved by the Commission prior to September 15, 2003,
25 for the allocation of transmission rights by an RTO or



1 ISO that has been authorized by the Commission to allo-
2 cate transmission rights.

3 “(c) CERTAIN TRANSMISSION RIGHTS.—The Com-
4 mission may exercise authority under this Act to make
5 transmission rights not used to meet an obligation covered
6 by subsection (a) available to other entities in a manner
7 determined by the Commission to be just, reasonable, and
8 not unduly discriminatory or preferential.

9 “(d) OBLIGATION TO BUILD.—Nothing in this Act
10 shall relieve a load-serving entity from any obligation
11 under State or local law to build transmission or distribu-
12 tion facilities adequate to meet its service obligations.

13 “(e) CONTRACTS.—Nothing in this section shall pro-
14 vide a basis for abrogating any contract or service agree-
15 ment for firm transmission service or rights in effect as
16 of the date of the enactment of this subsection.

17 “(f) WATER PUMPING FACILITIES.—The Commis-
18 sion shall ensure that any entity described in section
19 201(f) that owns transmission facilities used predomi-
20 nately to support its own water pumping facilities shall
21 have, with respect to such facilities, protections for trans-
22 mission service comparable to those provided to load-serv-
23 ing entities pursuant to this section.

24 “(g) ERCOT.—This section shall not apply within
25 the area referred to in section 212(k)(2)(A).



1 “(h) JURISDICTION.—This section does not authorize
2 the Commission to take any action not otherwise within
3 its jurisdiction.

4 “(i) EFFECT OF EXERCISING RIGHTS.—An entity
5 that lawfully exercises rights granted under subsection (a)
6 shall not be considered by such action as engaging in
7 undue discrimination or preference under this Act.

8 “(j) TVA AREA.—For purposes of subsection
9 (a)(1)(B), a load-serving entity that is located within the
10 service area of the Tennessee Valley Authority and that
11 has a firm wholesale power supply contract with the Ten-
12 nessee Valley Authority shall be deemed to hold firm
13 transmission rights for the transmission of such power.

14 “(k) DEFINITIONS.—For purposes of this section:

15 “(1) The term ‘distribution utility’ means an
16 electric utility that has a service obligation to end-
17 users or to a State utility or electric cooperative
18 that, directly or indirectly, through 1 or more addi-
19 tional State utilities or electric cooperatives, provides
20 electric service to end-users.

21 “(2) The term ‘load-serving entity’ means a dis-
22 tribution utility or an electric utility that has a serv-
23 ice obligation.

24 “(3) The term ‘service obligation’ means a re-
25 quirement applicable to, or the exercise of authority



1 granted to, an electric utility under Federal, State
2 or local law or under long-term contracts to provide
3 electric service to end-users or to a distribution util-
4 ity.

5 “(4) The term ‘State utility’ means a State or
6 any political subdivision of a State, or any agency,
7 authority, or instrumentality of any 1 or more of the
8 foregoing, or a corporation which is wholly owned,
9 directly or indirectly, by any 1 or more of the fore-
10 going, competent to carry on the business of devel-
11 oping, transmitting, utilizing or distributing power.”.

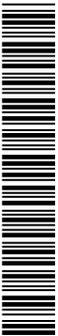
12 **SEC. 1237. STUDY ON THE BENEFITS OF ECONOMIC DIS-**
13 **PATCH.**

14 (a) STUDY.—The Secretary of Energy, in coordina-
15 tion and consultation with the States, shall conduct a
16 study on—

17 (1) the procedures currently used by electric
18 utilities to perform economic dispatch;

19 (2) identifying possible revisions to those proce-
20 dures to improve the ability of nonutility generation
21 resources to offer their output for sale for the pur-
22 pose of inclusion in economic dispatch; and

23 (3) the potential benefits to residential, com-
24 mercial, and industrial electricity consumers nation-
25 ally and in each state if economic dispatch proce-



1 dures were revised to improve the ability of non-
2 utility generation resources to offer their output for
3 inclusion in economic dispatch.

4 (b) DEFINITION.—The term “economic dispatch”
5 when used in this section means the operation of genera-
6 tion facilities to produce energy at the lowest cost to reli-
7 ably serve consumers, recognizing any operational limits
8 of generation and transmission facilities.

9 (c) REPORT TO CONGRESS AND THE STATES.—Not
10 later than 90 days after the date of enactment of this Act,
11 and on a yearly basis following, the Secretary of Energy
12 shall submit a report to Congress and the States on the
13 results of the study conducted under subsection (a), in-
14 cluding recommendations to Congress and the States for
15 any suggested legislative or regulatory changes.

16 **Subtitle D—Transmission Rate** 17 **Reform**

18 **SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

19 Part II of the Federal Power Act (16 U.S.C. 824 et
20 seq.) is amended by adding at the end the following:

21 **“SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

22 “(a) RULEMAKING REQUIREMENT.—Within 1 year
23 after the enactment of this section, the Commission shall
24 establish, by rule, incentive-based (including, but not lim-
25 ited to performance-based) rate treatments for the trans-



1 mission of electric energy in interstate commerce by public
2 utilities for the purpose of benefiting consumers by ensur-
3 ing reliability and reducing the cost of delivered power by
4 reducing transmission congestion. Such rule shall—

5 “(1) promote reliable and economically efficient
6 transmission and generation of electricity by pro-
7 moting capital investment in the enlargement, im-
8 provement, maintenance and operation of facilities
9 for the transmission of electric energy in interstate
10 commerce;

11 “(2) provide a return on equity that attracts
12 new investment in transmission facilities (including
13 related transmission technologies);

14 “(3) encourage deployment of transmission
15 technologies and other measures to increase the ca-
16 pacity and efficiency of existing transmission facili-
17 ties and improve the operation of such facilities; and

18 “(4) allow recovery of all prudently incurred
19 costs necessary to comply with mandatory reliability
20 standards issued pursuant to section 215 of this
21 Act.

22 The Commission may, from time to time, revise such rule.

23 “(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPA-
24 TION.—In the rule issued under this section, the Commis-
25 sion shall, to the extent within its jurisdiction, provide for



1 incentives to each transmitting utility or electric utility
2 that joins a Regional Transmission Organization or Inde-
3 pendent System Operator. Incentives provided by the
4 Commission pursuant to such rule shall include—

5 “(1) recovery of all prudently incurred costs to
6 develop and participate in any proposed or approved
7 RTO, ISO, or independent transmission company;

8 “(2) recovery of all costs previously approved by
9 a State commission which exercised jurisdiction over
10 the transmission facilities prior to the utility’s par-
11 ticipation in the RTO or ISO, including costs nec-
12 essary to honor preexisting transmission service con-
13 tracts, in a manner which does not reduce the reve-
14 nues the utility receives for transmission services for
15 a reasonable transition period after the utility joins
16 the RTO or ISO;

17 “(3) recovery as an expense in rates of the
18 costs prudently incurred to conduct transmission
19 planning and reliability activities, including the costs
20 of participating in RTO, ISO and other regional
21 planning activities and design, study and other
22 precertification costs involved in seeking permits and
23 approvals for proposed transmission facilities;

24 “(4) a current return in rates for construction
25 work in progress for transmission facilities and full



1 recovery of prudently incurred costs for constructing
2 transmission facilities;

3 “(5) formula transmission rates; and

4 “(6) a maximum 15 year accelerated deprecia-
5 tion on new transmission facilities for rate treatment
6 purposes.

7 The Commission shall ensure that any costs recoverable
8 pursuant to this subsection may be recovered by such util-
9 ity through the transmission rates charged by such utility
10 or through the transmission rates charged by the RTO
11 or ISO that provides transmission service to such utility.

12 “(c) **JUST AND REASONABLE RATES.**—All rates ap-
13 proved under the rules adopted pursuant to this section,
14 including any revisions to such rules, are subject to the
15 requirement of sections 205 and 206 that all rates,
16 charges, terms, and conditions be just and reasonable and
17 not unduly discriminatory or preferential.”

18 **SEC. 1242. VOLUNTARY TRANSMISSION PRICING PLANS.**

19 Part II of the Federal Power Act (16 U.S.C. 824 et
20 seq.) is amended by adding at the end the following:

21 **“SEC. 219. VOLUNTARY TRANSMISSION PRICING PLANS.**

22 “(a) **IN GENERAL.**—Any transmission provider, in-
23 cluding an RTO or ISO, may submit to the Commission
24 a plan or plans under section 205 containing the criteria
25 for determining the person or persons that will be required



1 to pay for any construction of new transmission facilities
2 or expansion, modification or upgrade of transmission fa-
3 cilities (in this section referred to as ‘transmission service
4 related expansion’) or new generator interconnection.

5 “(b) VOLUNTARY TRANSMISSION PRICING PLANS.—

6 (1) Any plan or plans submitted under subsection (a) shall
7 specify the method or methods by which costs may be allo-
8 cated or assigned. Such methods may include, but are not
9 limited to:

10 “(A) directly assigned;

11 “(B) participant funded; or

12 “(C) rolled into regional or sub-regional rates.

13 “(2) FERC shall approve a plan or plans submitted
14 under subparagraph (B) of paragraph (1) if such plan or
15 plans—

16 “(A) result in rates that are just and reason-
17 able and not unduly discriminatory or preferential
18 consistent with section 205; and

19 “(B) ensure that the costs of any transmission
20 service related expansion or new generator inter-
21 connection not required to meet applicable reliability
22 standards established under section 215 are assigned
23 in a fair manner, meaning that those who benefit
24 from the transmission service related expansion or



1 new generator interconnection pay an appropriate
2 share of the associated costs, provided that—

3 “(i) costs may not be assigned or allocated
4 to an electric utility if the native load customers
5 of that utility would not have required such
6 transmission service related expansion or new
7 generator interconnection absent the request for
8 transmission service related expansion or new
9 generator interconnection that necessitated the
10 investment;

11 “(ii) the party requesting such trans-
12 mission service related expansion or new gener-
13 ator interconnection shall not be required to
14 pay for both—

15 “(I) the assigned cost of the upgrade;
16 and

17 “(II) the difference between—

18 “(aa) the embedded cost paid for
19 transmission services (including the
20 cost of the requested upgrade); and

21 “(bb) the embedded cost that
22 would have been paid absent the up-
23 grade; and

24 “(iii) the party or parties who pay for fa-
25 cilities necessary for the transmission service



1 related expansion or new generator interconnec-
2 tion receives full compensation for its costs for
3 the participant funded facilities in the form
4 of—

5 “(I) monetary credit equal to the cost
6 of the participant funded facilities (ac-
7 counting for the time value of money at
8 the Gross Domestic Product deflator),
9 which credit shall be pro-rated in equal in-
10 stallments over a period of not more than
11 30 years and shall not exceed in total the
12 amount of the initial investment, against
13 the transmission charges that the funding
14 entity or its assignee is otherwise assessed
15 by the transmission provider;

16 “(II) appropriate financial or physical
17 rights; or

18 “(III) any other method of cost recov-
19 ery or compensation approved by the Com-
20 mission.

21 “(3) A plan submitted under this section shall apply
22 only to—

23 “(A) a contract or interconnection agreement
24 executed or filed with the Commission after the date
25 of enactment of this section; or



1 “(B) an interconnection agreement pending re-
2 hearing as of November 1, 2003.

3 “(4) Nothing in this section diminishes or alters the
4 rights of individual members of an RTO or ISO under
5 this Act.

6 “(5) Nothing in this section shall affect the allocation
7 of costs or the cost methodology employed by an RTO or
8 ISO authorized by the Commission to allocate costs (in-
9 cluding costs for transmission service related expansion or
10 new generator interconnection) prior to the date of enact-
11 ment of this section.

12 “(6) This section shall not apply within the area re-
13 ferred to in section 212(k)(2)(A).

14 “(7) The term ‘transmission provider’ means a public
15 utility that owns or operates facilities that provide inter-
16 connection or transmission service in interstate com-
17 merce.”.

18 **Subtitle E—Amendments to PURPA**

19 **SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.**

20 (a) ADOPTION OF STANDARDS.—Section 111(d) of
21 the Public Utility Regulatory Policies Act of 1978 (16
22 U.S.C. 2621(d)) is amended by adding at the end the fol-
23 lowing:

24 “(11) NET METERING.—Each electric utility
25 shall make available upon request net metering serv-



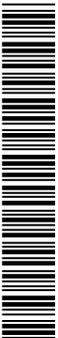
1 ice to any electric consumer that the electric utility
2 serves. For purposes of this paragraph, the term
3 ‘net metering service’ means service to an electric
4 consumer under which electric energy generated by
5 that electric consumer from an eligible on-site gener-
6 ating facility and delivered to the local distribution
7 facilities may be used to offset electric energy pro-
8 vided by the electric utility to the electric consumer
9 during the applicable billing period.

10 “(12) FUEL SOURCES.—Each electric utility
11 shall develop a plan to minimize dependence on 1
12 fuel source and to ensure that the electric energy it
13 sells to consumers is generated using a diverse range
14 of fuels and technologies, including renewable tech-
15 nologies.

16 “(13) FOSSIL FUEL GENERATION EFFI-
17 CIENCY.—Each electric utility shall develop and im-
18 plement a 10-year plan to increase the efficiency of
19 its fossil fuel generation.”.

20 (b) COMPLIANCE.—

21 (1) TIME LIMITATIONS.—Section 112(b) of the
22 Public Utility Regulatory Policies Act of 1978 (16
23 U.S.C. 2622(b)) is amended by adding at the end
24 the following:



1 “(3)(A) Not later than 2 years after the enactment
2 of this paragraph, each State regulatory authority (with
3 respect to each electric utility for which it has ratemaking
4 authority) and each nonregulated electric utility shall com-
5 mence the consideration referred to in section 111, or set
6 a hearing date for such consideration, with respect to each
7 standard established by paragraphs (11) through (13) of
8 section 111(d).

9 “(B) Not later than 3 years after the date of the en-
10 actment of this paragraph, each State regulatory authority
11 (with respect to each electric utility for which it has rate-
12 making authority), and each nonregulated electric utility,
13 shall complete the consideration, and shall make the deter-
14 mination, referred to in section 111 with respect to each
15 standard established by paragraphs (11) through (13) of
16 section 111(d).”.

17 (2) FAILURE TO COMPLY.—Section 112(c) of
18 the Public Utility Regulatory Policies Act of 1978
19 (16 U.S.C. 2622(c)) is amended by adding at the
20 end the following:

21 “In the case of each standard established by paragraphs
22 (11) through (13) of section 111(d), the reference con-
23 tained in this subsection to the date of enactment of this
24 Act shall be deemed to be a reference to the date of enact-
25 ment of such paragraphs (11) through (13).”.



1 (3) PRIOR STATE ACTIONS.—

2 (A) IN GENERAL.—Section 112 of the
3 Public Utility Regulatory Policies Act of 1978
4 (16 U.S.C. 2622) is amended by adding at the
5 end the following:

6 “(d) PRIOR STATE ACTIONS.—Subsections (b) and
7 (c) of this section shall not apply to the standards estab-
8 lished by paragraphs (11) through (13) of section 111(d)
9 in the case of any electric utility in a State if, before the
10 enactment of this subsection—

11 “(1) the State has implemented for such utility
12 the standard concerned (or a comparable standard);

13 “(2) the State regulatory authority for such
14 State or relevant nonregulated electric utility has
15 conducted a proceeding to consider implementation
16 of the standard concerned (or a comparable stand-
17 ard) for such utility; or

18 “(3) the State legislature has voted on the im-
19 plementation of such standard (or a comparable
20 standard) for such utility.”.

21 (B) CROSS REFERENCE.—Section 124 of
22 such Act (16 U.S.C. 2634) is amended by add-
23 ing the following at the end thereof: “In the
24 case of each standard established by paragraphs
25 (11) through (13) of section 111(d), the ref-



1 erence contained in this subsection to the date
2 of enactment of this Act shall be deemed to be
3 a reference to the date of enactment of such
4 paragraphs (11) through (13).”.

5 **SEC. 1252. SMART METERING.**

6 (a) IN GENERAL.—Section 111(d) of the Public Utili-
7 ties Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))
8 is amended by adding at the end the following:

9 “(14) TIME-BASED METERING AND COMMU-
10 NICATIONS.—

11 “(A) Not later than 18 months after the
12 date of enactment of this paragraph, each elec-
13 tric utility shall offer each of its customer class-
14 es, and provide individual customers upon cus-
15 tomer request, a time-based rate schedule under
16 which the rate charged by the electric utility
17 varies during different time periods and reflects
18 the variance, if any, in the utility’s costs of gen-
19 erating and purchasing electricity at the whole-
20 sale level. The time-based rate schedule shall
21 enable the electric consumer to manage energy
22 use and cost through advanced metering and
23 communications technology.

24 “(B) The types of time-based rate sched-
25 ules that may be offered under the schedule re-



1 ferred to in subparagraph (A) include, among
2 others—

3 “(i) time-of-use pricing whereby elec-
4 tricity prices are set for a specific time pe-
5 riod on an advance or forward basis, typi-
6 cally not changing more often than twice a
7 year, based on the utility’s cost of gener-
8 ating and/or purchasing such electricity at
9 the wholesale level for the benefit of the
10 consumer. Prices paid for energy consumed
11 during these periods shall be pre-estab-
12 lished and known to consumers in advance
13 of such consumption, allowing them to
14 vary their demand and usage in response
15 to such prices and manage their energy
16 costs by shifting usage to a lower cost pe-
17 riod or reducing their consumption overall;

18 “(ii) critical peak pricing whereby
19 time-of-use prices are in effect except for
20 certain peak days, when prices may reflect
21 the costs of generating and/or purchasing
22 electricity at the wholesale level and when
23 consumers may receive additional discounts
24 for reducing peak period energy consump-
25 tion; and



1 “(iii) real-time pricing whereby elec-
2 tricity prices are set for a specific time pe-
3 riod on an advanced or forward basis, re-
4 flecting the utility’s cost of generating and/
5 or purchasing electricity at the wholesale
6 level, and may change as often as hourly.

7 “(C) Each electric utility subject to sub-
8 paragraph (A) shall provide each customer re-
9 questing a time-based rate with a time-based
10 meter capable of enabling the utility and cus-
11 tomer to offer and receive such rate, respec-
12 tively.

13 “(D) For purposes of implementing this
14 paragraph, any reference contained in this sec-
15 tion to the date of enactment of the Public Util-
16 ity Regulatory Policies Act of 1978 shall be
17 deemed to be a reference to the date of enact-
18 ment of this paragraph.

19 “(E) In a State that permits third-party
20 marketers to sell electric energy to retail elec-
21 tric consumers, such consumers shall be entitled
22 to receive the same time-based metering and
23 communications device and service as a retail
24 electric consumer of the electric utility.



1 “(F) Notwithstanding subsections (b) and
2 (c) of section 112, each State regulatory au-
3 thority shall, not later than 18 months after the
4 date of enactment of this paragraph conduct an
5 investigation in accordance with section 115(i)
6 and issue a decision whether it is appropriate to
7 implement the standards set out in subpara-
8 graphs (A) and (C).”.

9 (b) STATE INVESTIGATION OF DEMAND RESPONSE
10 AND TIME-BASED METERING.—Section 115 of the Public
11 Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625)
12 is amended as follows:

13 (1) By inserting in subsection (b) after the
14 phrase “the standard for time-of-day rates estab-
15 lished by section 111(d)(3)” the following: “and the
16 standard for time-based metering and communica-
17 tions established by section 111(d)(14)”.

18 (2) By inserting in subsection (b) after the
19 phrase “are likely to exceed the metering” the fol-
20 lowing: “and communications”.

21 (3) By adding the at the end the following:

22 “(i) TIME-BASED METERING AND COMMUNICA-
23 TIONS.—In making a determination with respect to the
24 standard established by section 111(d)(14), the investiga-
25 tion requirement of section 111(d)(14)(F) shall be as fol-



1 lows: Each State regulatory authority shall conduct an in-
2 vestigation and issue a decision whether or not it is appro-
3 priate for electric utilities to provide and install time-based
4 meters and communications devices for each of their cus-
5 tomers which enable such customers to participate in time-
6 based pricing rate schedules and other demand response
7 programs.”.

8 (c) FEDERAL ASSISTANCE ON DEMAND RE-
9 SPONSE.—Section 132(a) of the Public Utility Regulatory
10 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by
11 striking “and” at the end of paragraph (3), striking the
12 period at the end of paragraph (4) and inserting “; and”,
13 and by adding the following at the end thereof:

14 “(5) technologies, techniques, and rate-making
15 methods related to advanced metering and commu-
16 nications and the use of these technologies, tech-
17 niques and methods in demand response programs.”.

18 (d) FEDERAL GUIDANCE.—Section 132 of the Public
19 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)
20 is amended by adding the following at the end thereof:

21 “(d) DEMAND RESPONSE.—The Secretary shall be
22 responsible for—

23 “(1) educating consumers on the availability,
24 advantages, and benefits of advanced metering and



1 communications technologies, including the funding
2 of demonstration or pilot projects;

3 “(2) working with States, utilities, other energy
4 providers and advanced metering and communica-
5 tions experts to identify and address barriers to the
6 adoption of demand response programs; and

7 “(3) not later than 180 days after the date of
8 enactment of the Energy Policy Act of 2005, pro-
9 viding Congress with a report that identifies and
10 quantifies the national benefits of demand response
11 and makes a recommendation on achieving specific
12 levels of such benefits by January 1, 2007.”.

13 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
14 TION.—

15 (1) IN GENERAL.—It is the policy of the United
16 States to encourage States to coordinate, on a re-
17 gional basis, State energy policies to provide reliable
18 and affordable demand response services to the pub-
19 lic.

20 (2) TECHNICAL ASSISTANCE.—The Secretary of
21 Energy shall provide technical assistance to States
22 and regional organizations formed by 2 or more
23 States to assist them in—

24 (A) identifying the areas with the greatest
25 demand response potential;



1 (B) identifying and resolving problems in
2 transmission and distribution networks, includ-
3 ing through the use of demand response;

4 (C) developing plans and programs to use
5 demand response to respond to peak demand or
6 emergency needs; and

7 (D) identifying specific measures con-
8 sumers can take to participate in these demand
9 response programs.

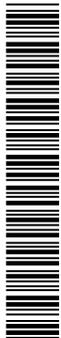
10 (3) REPORT.—Not later than 1 year after the
11 date of enactment of the Energy Policy Act of 2005,
12 the Commission shall prepare and publish an annual
13 report, by appropriate region, that assesses demand
14 response resources, including those available from all
15 consumer classes, and which identifies and reviews—

16 (A) saturation and penetration rate of ad-
17 vanced meters and communications tech-
18 nologies, devices and systems;

19 (B) existing demand response programs
20 and time-based rate programs;

21 (C) the annual resource contribution of de-
22 mand resources;

23 (D) the potential for demand response as
24 a quantifiable, reliable resource for regional
25 planning purposes; and



1 (E) steps taken to ensure that, in regional
2 transmission planning and operations, demand
3 resources are provided equitable treatment as a
4 quantifiable, reliable resource relative to the re-
5 source obligations of any load-serving entity,
6 transmission provider, or transmitting party.

7 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-
8 SPONSE DEVICES.—It is the policy of the United States
9 that time-based pricing and other forms of demand re-
10 sponse, whereby electricity customers are provided with
11 electricity price signals and the ability to benefit by re-
12 sponding to them, shall be encouraged, and the deploy-
13 ment of such technology and devices that enable electricity
14 customers to participate in such pricing and demand re-
15 sponse systems shall be facilitated. It is further the policy
16 of the United States that the benefits of such demand re-
17 sponse that accrue to those not deploying such technology
18 and devices, but who are part of the same regional elec-
19 tricity entity, shall be recognized.

20 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-
21 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
22 2622(b)) is amended by adding at the end the following:

23 “(4)(A) Not later than 1 year after the enact-
24 ment of this paragraph, each State regulatory au-
25 thority (with respect to each electric utility for which



1 it has ratemaking authority) and each nonregulated
2 electric utility shall commence the consideration re-
3 ferred to in section 111, or set a hearing date for
4 such consideration, with respect to the standard es-
5 tablished by paragraph (14) of section 111(d).

6 “(B) Not later than 2 years after the date of
7 the enactment of this paragraph, each State regu-
8 latory authority (with respect to each electric utility
9 for which it has ratemaking authority), and each
10 nonregulated electric utility, shall complete the con-
11 sideration, and shall make the determination, re-
12 ferred to in section 111 with respect to the standard
13 established by paragraph (14) of section 111(d).”.

14 (h) FAILURE TO COMPLY.—Section 112(c) of the
15 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
16 2622(c)) is amended by adding at the end the following:
17 “In the case of the standard established by paragraph (14)
18 of section 111(d), the reference contained in this sub-
19 section to the date of enactment of this Act shall be
20 deemed to be a reference to the date of enactment of such
21 paragraph (14).”.

22 (i) PRIOR STATE ACTIONS REGARDING SMART ME-
23 TERING STANDARDS.—

24 (1) IN GENERAL.—Section 112 of the Public
25 Utility Regulatory Policies Act of 1978 (16 U.S.C.



1 2622) is amended by adding at the end the fol-
2 lowing:

3 “(e) PRIOR STATE ACTIONS.—Subsections (b) and
4 (c) of this section shall not apply to the standard estab-
5 lished by paragraph (14) of section 111(d) in the case of
6 any electric utility in a State if, before the enactment of
7 this subsection—

8 “(1) the State has implemented for such utility
9 the standard concerned (or a comparable standard);

10 “(2) the State regulatory authority for such
11 State or relevant nonregulated electric utility has
12 conducted a proceeding to consider implementation
13 of the standard concerned (or a comparable stand-
14 ard) for such utility within the previous 3 years; or

15 “(3) the State legislature has voted on the im-
16 plementation of such standard (or a comparable
17 standard) for such utility within the previous 3
18 years.”.

19 (2) CROSS REFERENCE.—Section 124 of such
20 Act (16 U.S.C. 2634) is amended by adding the fol-
21 lowing at the end thereof: “In the case of the stand-
22 ard established by paragraph (14) of section 111(d),
23 the reference contained in this subsection to the date
24 of enactment of this Act shall be deemed to be a ref-



1 erence to the date of enactment of such paragraph
2 (14).”.

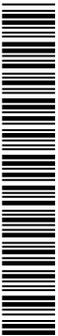
3 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**
4 **TION PURCHASE AND SALE REQUIREMENTS.**

5 (a) **TERMINATION OF MANDATORY PURCHASE AND**
6 **SALE REQUIREMENTS.**—Section 210 of the Public Utility
7 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is
8 amended by adding at the end the following:

9 “(m) **TERMINATION OF MANDATORY PURCHASE AND**
10 **SALE REQUIREMENTS.**—

11 “(1) **OBLIGATION TO PURCHASE.**—After the
12 date of enactment of this subsection, no electric util-
13 ity shall be required to enter into a new contract or
14 obligation to purchase electric energy from a quali-
15 fying cogeneration facility or a qualifying small
16 power production facility under this section if the
17 Commission finds that the qualifying cogeneration
18 facility or qualifying small power production facility
19 has nondiscriminatory access to—

20 “(A)(i) independently administered, auc-
21 tion-based day ahead and real time wholesale
22 markets for the sale of electric energy; and (ii)
23 wholesale markets for long-term sales of capac-
24 ity and electric energy; or



1 “(B)(i) transmission and interconnection
2 services that are provided by a Commission-ap-
3 proved regional transmission entity and admin-
4 istered pursuant to an open access transmission
5 tariff that affords nondiscriminatory treatment
6 to all customers; and (ii) competitive wholesale
7 markets that provide a meaningful opportunity
8 to sell capacity, including long-term and short-
9 term sales, and electric energy, including long-
10 term, short-term and real-time sales, to buyers
11 other than the utility to which the qualifying fa-
12 cility is interconnected. In determining whether
13 a meaningful opportunity to sell exists, the
14 Commission shall consider, among other fac-
15 tors, evidence of transactions within the rel-
16 evant market; or

17 “(C) wholesale markets for the sale of ca-
18 pacity and electric energy that are, at a min-
19 imum, of comparable competitive quality as
20 markets described in subparagraphs (A) and
21 (B).

22 “(2) REVISED PURCHASE AND SALE OBLIGA-
23 TION FOR NEW FACILITIES.—(A) After the date of
24 enactment of this subsection, no electric utility shall
25 be required pursuant to this section to enter into a



1 new contract or obligation to purchase from or sell
2 electric energy to a facility that is not an existing
3 qualifying cogeneration facility unless the facility
4 meets the criteria for qualifying cogeneration facili-
5 ties established by the Commission pursuant to the
6 rulemaking required by subsection (n).

7 “(B) For the purposes of this paragraph, the
8 term ‘existing qualifying cogeneration facility’ means
9 a facility that—

10 “(i) was a qualifying cogeneration facility
11 on the date of enactment of subsection (m); or

12 “(ii) had filed with the Commission a no-
13 tice of self-certification, self recertification or
14 an application for Commission certification
15 under 18 C.F.R. 292.207 prior to the date on
16 which the Commission issues the final rule re-
17 quired by subsection (n).

18 “(3) COMMISSION REVIEW.—Any electric utility
19 may file an application with the Commission for re-
20 lief from the mandatory purchase obligation pursu-
21 ant to this subsection on a service territory-wide
22 basis. Such application shall set forth the factual
23 basis upon which relief is requested and describe
24 why the conditions set forth in subparagraphs (A),
25 (B) or (C) of paragraph (1) of this subsection have



1 been met. After notice, including sufficient notice to
2 potentially affected qualifying cogeneration facilities
3 and qualifying small power production facilities, and
4 an opportunity for comment, the Commission shall
5 make a final determination within 90 days of such
6 application regarding whether the conditions set
7 forth in subparagraphs (A), (B) or (C) of paragraph
8 (1) have been met.

9 “(4) REINSTATEMENT OF OBLIGATION TO PUR-
10 CHASE.—At any time after the Commission makes a
11 finding under paragraph (3) relieving an electric
12 utility of its obligation to purchase electric energy,
13 a qualifying cogeneration facility, a qualifying small
14 power production facility, a State agency, or any
15 other affected person may apply to the Commission
16 for an order reinstating the electric utility’s obliga-
17 tion to purchase electric energy under this section.
18 Such application shall set forth the factual basis
19 upon which the application is based and describe
20 why the conditions set forth in subparagraphs (A),
21 (B) or (C) of paragraph (1) of this subsection are
22 no longer met. After notice, including sufficient no-
23 tice to potentially affected utilities, and opportunity
24 for comment, the Commission shall issue an order
25 within 90 days of such application reinstating the



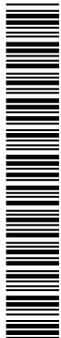
1 electric utility's obligation to purchase electric en-
2 ergy under this section if the Commission finds that
3 the conditions set forth in subparagraphs (A), (B) or
4 (C) of paragraph (1) which relieved the obligation to
5 purchase, are no longer met.

6 “(5) OBLIGATION TO SELL.—After the date of
7 enactment of this subsection, no electric utility shall
8 be required to enter into a new contract or obliga-
9 tion to sell electric energy to a qualifying cogenera-
10 tion facility or a qualifying small power production
11 facility under this section if the Commission finds
12 that—

13 “(A) competing retail electric suppliers are
14 willing and able to sell and deliver electric en-
15 ergy to the qualifying cogeneration facility or
16 qualifying small power production facility; and

17 “(B) the electric utility is not required by
18 State law to sell electric energy in its service
19 territory.

20 “(6) NO EFFECT ON EXISTING RIGHTS AND
21 REMEDIES.—Nothing in this subsection affects the
22 rights or remedies of any party under any contract
23 or obligation, in effect or pending approval before
24 the appropriate State regulatory authority or non-
25 regulated electric utility on the date of enactment of



1 this subsection, to purchase electric energy or capac-
2 ity from or to sell electric energy or capacity to a
3 qualifying cogeneration facility or qualifying small
4 power production facility under this Act (including
5 the right to recover costs of purchasing electric en-
6 ergy or capacity).

7 “(7) RECOVERY OF COSTS.—(A) The Commis-
8 sion shall issue and enforce such regulations as are
9 necessary to ensure that an electric utility that pur-
10 chases electric energy or capacity from a qualifying
11 cogeneration facility or qualifying small power pro-
12 duction facility in accordance with any legally en-
13 forceable obligation entered into or imposed under
14 this section recovers all prudently incurred costs as-
15 sociated with the purchase.

16 “(B) A regulation under subparagraph (A) shall
17 be enforceable in accordance with the provisions of
18 law applicable to enforcement of regulations under
19 the Federal Power Act (16 U.S.C. 791a et seq.).

20 “(n) RULEMAKING FOR NEW QUALIFYING FACILI-
21 TIES.—(1)(A) Not later than 180 days after the date of
22 enactment of this section, the Commission shall issue a
23 rule revising the criteria in 18 C.F.R. 292.205 for new
24 qualifying cogeneration facilities seeking to sell electric en-
25 ergy pursuant to section 210 of this Act to ensure—



1 “(i) that the thermal energy output of a new
2 qualifying cogeneration facility is used in a produc-
3 tive and beneficial manner;

4 “(ii) the electrical, thermal, and chemical out-
5 put of the cogeneration facility is used fundamen-
6 tally for industrial, commercial, or institutional pur-
7 poses and is not intended fundamentally for sale to
8 an electric utility, taking into account technological,
9 efficiency, economic, and variable thermal energy re-
10 quirements, as well as State laws applicable to sales
11 of electric energy from a qualifying facility to its
12 host facility; and

13 “(iii) continuing progress in the development of
14 efficient electric energy generating technology.

15 “(B) The rule issued pursuant to section (n)(1)(A)
16 shall be applicable only to facilities that seek to sell electric
17 energy pursuant to section 210 of this Act. For all other
18 purposes, except as specifically provided in section
19 (m)(2)(A), qualifying facility status shall be determined
20 in accordance with the rules and regulations of this Act.

21 “(2) Notwithstanding rule revisions under paragraph
22 (1), the Commission’s criteria for qualifying cogeneration
23 facilities in effect prior to the date on which the Commis-
24 sion issues the final rule required by paragraph (1) shall
25 continue to apply to any cogeneration facility that—



1 “(A) was a qualifying cogeneration facility on
2 the date of enactment of subsection (m), or

3 “(B) had filed with the Commission a notice of
4 self-certification, self-recertification or an application
5 for Commission certification under 18 C.F.R.
6 292.207 prior to the date on which the Commission
7 issues the final rule required by paragraph (1).”.

8 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

9 (1) QUALIFYING SMALL POWER PRODUCTION
10 FACILITY.—Section 3(17)(C) of the Federal Power
11 Act (16 U.S.C. 796(17)(C)) is amended to read as
12 follows:

13 “(C) ‘qualifying small power production fa-
14 cility’ means a small power production facility
15 that the Commission determines, by rule, meets
16 such requirements (including requirements re-
17 specting fuel use, fuel efficiency, and reliability)
18 as the Commission may, by rule, prescribe;”.

19 (2) QUALIFYING COGENERATION FACILITY.—
20 Section 3(18)(B) of the Federal Power Act (16
21 U.S.C. 796(18)(B)) is amended to read as follows:

22 “(B) ‘qualifying cogeneration facility’
23 means a cogeneration facility that the Commis-
24 sion determines, by rule, meets such require-
25 ments (including requirements respecting min-



1 imum size, fuel use, and fuel efficiency) as the
2 Commission may, by rule, prescribe;”.

3 **Subtitle F—Repeal of PUHCA**

4 **SEC. 1261. SHORT TITLE.**

5 This subtitle may be cited as the “Public Utility
6 Holding Company Act of 2005”.

7 **SEC. 1262. DEFINITIONS.**

8 For purposes of this subtitle:

9 (1) **AFFILIATE.**—The term “affiliate” of a com-
10 pany means any company, 5 percent or more of the
11 outstanding voting securities of which are owned,
12 controlled, or held with power to vote, directly or in-
13 directly, by such company.

14 (2) **ASSOCIATE COMPANY.**—The term “associate
15 company” of a company means any company in the
16 same holding company system with such company.

17 (3) **COMMISSION.**—The term “Commission”
18 means the Federal Energy Regulatory Commission.

19 (4) **COMPANY.**—The term “company” means a
20 corporation, partnership, association, joint stock
21 company, business trust, or any organized group of
22 persons, whether incorporated or not, or a receiver,
23 trustee, or other liquidating agent of any of the fore-
24 going.



1 (5) ELECTRIC UTILITY COMPANY.—The term
2 “electric utility company” means any company that
3 owns or operates facilities used for the generation,
4 transmission, or distribution of electric energy for
5 sale.

6 (6) EXEMPT WHOLESALE GENERATOR AND
7 FOREIGN UTILITY COMPANY.—The terms “exempt
8 wholesale generator” and “foreign utility company”
9 have the same meanings as in sections 32 and 33,
10 respectively, of the Public Utility Holding Company
11 Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those
12 sections existed on the day before the effective date
13 of this subtitle.

14 (7) GAS UTILITY COMPANY.—The term “gas
15 utility company” means any company that owns or
16 operates facilities used for distribution at retail
17 (other than the distribution only in enclosed portable
18 containers or distribution to tenants or employees of
19 the company operating such facilities for their own
20 use and not for resale) of natural or manufactured
21 gas for heat, light, or power.

22 (8) HOLDING COMPANY.—The term “holding
23 company” means—

24 (A) any company that directly or indirectly
25 owns, controls, or holds, with power to vote, 10



1 percent or more of the outstanding voting secu-
2 rities of a public-utility company or of a holding
3 company of any public-utility company; and

4 (B) any person, determined by the Com-
5 mission, after notice and opportunity for hear-
6 ing, to exercise directly or indirectly (either
7 alone or pursuant to an arrangement or under-
8 standing with 1 or more persons) such a con-
9 trolling influence over the management or poli-
10 cies of any public-utility company or holding
11 company as to make it necessary or appropriate
12 for the rate protection of utility customers with
13 respect to rates that such person be subject to
14 the obligations, duties, and liabilities imposed
15 by this subtitle upon holding companies.

16 (9) HOLDING COMPANY SYSTEM.—The term
17 “holding company system” means a holding com-
18 pany, together with its subsidiary companies.

19 (10) JURISDICTIONAL RATES.—The term “ju-
20 risdictional rates” means rates accepted or estab-
21 lished by the Commission for the transmission of
22 electric energy in interstate commerce, the sale of
23 electric energy at wholesale in interstate commerce,
24 the transportation of natural gas in interstate com-
25 merce, and the sale in interstate commerce of nat-



1 ural gas for resale for ultimate public consumption
2 for domestic, commercial, industrial, or any other
3 use.

4 (11) NATURAL GAS COMPANY.—The term “nat-
5 ural gas company” means a person engaged in the
6 transportation of natural gas in interstate commerce
7 or the sale of such gas in interstate commerce for
8 resale.

9 (12) PERSON.—The term “person” means an
10 individual or company.

11 (13) PUBLIC UTILITY.—The term “public util-
12 ity” means any person who owns or operates facili-
13 ties used for transmission of electric energy in inter-
14 state commerce or sales of electric energy at whole-
15 sale in interstate commerce.

16 (14) PUBLIC-UTILITY COMPANY.—The term
17 “public-utility company” means an electric utility
18 company or a gas utility company.

19 (15) STATE COMMISSION.—The term “State
20 commission” means any commission, board, agency,
21 or officer, by whatever name designated, of a State,
22 municipality, or other political subdivision of a State
23 that, under the laws of such State, has jurisdiction
24 to regulate public utility companies.

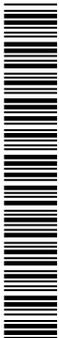


1 (16) SUBSIDIARY COMPANY.—The term “sub-
2 sidiary company” of a holding company means—

3 (A) any company, 10 percent or more of
4 the outstanding voting securities of which are
5 directly or indirectly owned, controlled, or held
6 with power to vote, by such holding company;
7 and

8 (B) any person, the management or poli-
9 cies of which the Commission, after notice and
10 opportunity for hearing, determines to be sub-
11 ject to a controlling influence, directly or indi-
12 rectly, by such holding company (either alone or
13 pursuant to an arrangement or understanding
14 with 1 or more other persons) so as to make it
15 necessary for the rate protection of utility cus-
16 tomers with respect to rates that such person
17 be subject to the obligations, duties, and liabil-
18 ities imposed by this subtitle upon subsidiary
19 companies of holding companies.

20 (17) VOTING SECURITY.—The term “voting se-
21 curity” means any security presently entitling the
22 owner or holder thereof to vote in the direction or
23 management of the affairs of a company.



1 **SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
2 **PANY ACT OF 1935.**

3 The Public Utility Holding Company Act of 1935 (15
4 U.S.C. 79 et seq.) is repealed.

5 **SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.**

6 (a) IN GENERAL.—Each holding company and each
7 associate company thereof shall maintain, and shall make
8 available to the Commission, such books, accounts, memo-
9 randa, and other records as the Commission determines
10 are relevant to costs incurred by a public utility or natural
11 gas company that is an associate company of such holding
12 company and necessary or appropriate for the protection
13 of utility customers with respect to jurisdictional rates.

14 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
15 ing company or of any subsidiary company of a holding
16 company shall maintain, and shall make available to the
17 Commission, such books, accounts, memoranda, and other
18 records with respect to any transaction with another affil-
19 iate, as the Commission determines are relevant to costs
20 incurred by a public utility or natural gas company that
21 is an associate company of such holding company and nec-
22 essary or appropriate for the protection of utility cus-
23 tomers with respect to jurisdictional rates.

24 (c) HOLDING COMPANY SYSTEMS.—The Commission
25 may examine the books, accounts, memoranda, and other
26 records of any company in a holding company system, or



1 any affiliate thereof, as the Commission determines are
2 relevant to costs incurred by a public utility or natural
3 gas company within such holding company system and
4 necessary or appropriate for the protection of utility cus-
5 tomers with respect to jurisdictional rates.

6 (d) CONFIDENTIALITY.—No member, officer, or em-
7 ployee of the Commission shall divulge any fact or infor-
8 mation that may come to his or her knowledge during the
9 course of examination of books, accounts, memoranda, or
10 other records as provided in this section, except as may
11 be directed by the Commission or by a court of competent
12 jurisdiction.

13 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

14 (a) IN GENERAL.—Upon the written request of a
15 State commission having jurisdiction to regulate a public-
16 utility company in a holding company system, the holding
17 company or any associate company or affiliate thereof,
18 other than such public-utility company, wherever located,
19 shall produce for inspection books, accounts, memoranda,
20 and other records that—

21 (1) have been identified in reasonable detail in
22 a proceeding before the State commission;

23 (2) the State commission determines are rel-
24 evant to costs incurred by such public-utility com-
25 pany; and



1 (3) are necessary for the effective discharge of
2 the responsibilities of the State commission with re-
3 spect to such proceeding.

4 (b) LIMITATION.—Subsection (a) does not apply to
5 any person that is a holding company solely by reason of
6 ownership of 1 or more qualifying facilities under the Pub-
7 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
8 2601 et seq.).

9 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
10 duction of books, accounts, memoranda, and other records
11 under subsection (a) shall be subject to such terms and
12 conditions as may be necessary and appropriate to safe-
13 guard against unwarranted disclosure to the public of any
14 trade secrets or sensitive commercial information.

15 (d) EFFECT ON STATE LAW.—Nothing in this sec-
16 tion shall preempt applicable State law concerning the pro-
17 vision of books, accounts, memoranda, and other records,
18 or in any way limit the rights of any State to obtain books,
19 accounts, memoranda, and other records under any other
20 Federal law, contract, or otherwise.

21 (e) COURT JURISDICTION.—Any United States dis-
22 trict court located in the State in which the State commis-
23 sion referred to in subsection (a) is located shall have ju-
24 risdiction to enforce compliance with this section.



1 **SEC. 1266. EXEMPTION AUTHORITY.**

2 (a) RULEMAKING.—Not later than 90 days after the
3 effective date of this subtitle, the Commission shall issue
4 a final rule to exempt from the requirements of section
5 1264 (relating to Federal access to books and records) any
6 person that is a holding company, solely with respect to
7 1 or more—

8 (1) qualifying facilities under the Public Utility
9 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et
10 seq.);

11 (2) exempt wholesale generators; or

12 (3) foreign utility companies.

13 (b) OTHER AUTHORITY.—The Commission shall ex-
14 empt a person or transaction from the requirements of
15 section 1264 (relating to Federal access to books and
16 records) if, upon application or upon the motion of the
17 Commission—

18 (1) the Commission finds that the books, ac-
19 counts, memoranda, and other records of any person
20 are not relevant to the jurisdictional rates of a pub-
21 lic utility or natural gas company; or

22 (2) the Commission finds that any class of
23 transactions is not relevant to the jurisdictional
24 rates of a public utility or natural gas company.



1 **SEC. 1267. AFFILIATE TRANSACTIONS.**

2 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-
3 ing in this subtitle shall limit the authority of the Commis-
4 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
5 to require that jurisdictional rates are just and reasonable,
6 including the ability to deny or approve the pass through
7 of costs, the prevention of cross-subsidization, and the
8 issuance of such rules and regulations as are necessary
9 or appropriate for the protection of utility consumers.

10 (b) RECOVERY OF COSTS.—Nothing in this subtitle
11 shall preclude the Commission or a State commission from
12 exercising its jurisdiction under otherwise applicable law
13 to determine whether a public-utility company, public util-
14 ity, or natural gas company may recover in rates any costs
15 of an activity performed by an associate company, or any
16 costs of goods or services acquired by such public-utility
17 company from an associate company.

18 **SEC. 1268. APPLICABILITY.**

19 Except as otherwise specifically provided in this sub-
20 title, no provision of this subtitle shall apply to, or be
21 deemed to include—

22 (1) the United States;

23 (2) a State or any political subdivision of a
24 State;

25 (3) any foreign governmental authority not op-
26 erating in the United States;



1 (4) any agency, authority, or instrumentality of
2 any entity referred to in paragraph (1), (2), or (3);
3 or

4 (5) any officer, agent, or employee of any entity
5 referred to in paragraph (1), (2), (3), or (4) acting
6 as such in the course of his or her official duty.

7 **SEC. 1269. EFFECT ON OTHER REGULATIONS.**

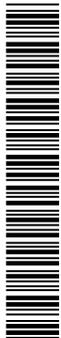
8 Nothing in this subtitle precludes the Commission or
9 a State commission from exercising its jurisdiction under
10 otherwise applicable law to protect utility customers.

11 **SEC. 1270. ENFORCEMENT.**

12 The Commission shall have the same powers as set
13 forth in sections 306 through 317 of the Federal Power
14 Act (16 U.S.C. 825e–825p) to enforce the provisions of
15 this subtitle.

16 **SEC. 1271. SAVINGS PROVISIONS.**

17 (a) IN GENERAL.—Nothing in this subtitle, or other-
18 wise in the Public Utility Holding Company Act of 1935,
19 or rules, regulations, or orders thereunder, prohibits a per-
20 son from engaging in or continuing to engage in activities
21 or transactions in which it is legally engaged or authorized
22 to engage on the date of enactment of this Act, if that
23 person continues to comply with the terms (other than an
24 expiration date or termination date) of any such author-
25 ization, whether by rule or by order.



1 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
2 Nothing in this subtitle limits the authority of the Com-
3 mission under the Federal Power Act (16 U.S.C. 791a et
4 seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

5 **SEC. 1272. IMPLEMENTATION.**

6 Not later than 12 months after the date of enactment
7 of this subtitle, the Commission shall—

8 (1) issue such regulations as may be necessary
9 or appropriate to implement this subtitle (other than
10 section 1265, relating to State access to books and
11 records); and

12 (2) submit to Congress detailed recommenda-
13 tions on technical and conforming amendments to
14 Federal law necessary to carry out this subtitle and
15 the amendments made by this subtitle.

16 **SEC. 1273. TRANSFER OF RESOURCES.**

17 All books and records that relate primarily to the
18 functions transferred to the Commission under this sub-
19 title shall be transferred from the Securities and Exchange
20 Commission to the Commission.

21 **SEC. 1274. EFFECTIVE DATE.**

22 (a) IN GENERAL.—Except for section 1272 (relating
23 to implementation), this subtitle shall take effect 12
24 months after the date of enactment of this subtitle.



1 (b) COMPLIANCE WITH CERTAIN RULES.—If the
2 Commission approves and makes effective any final rule-
3 making modifying the standards of conduct governing en-
4 tities that own, operate, or control facilities for trans-
5 mission of electricity in interstate commerce or transpor-
6 tation of natural gas in interstate commerce prior to the
7 effective date of this subtitle, any action taken by a public-
8 utility company or utility holding company to comply with
9 the requirements of such rulemaking shall not subject
10 such public-utility company or utility holding company to
11 any regulatory requirement applicable to a holding com-
12 pany under the Public Utility Holding Company Act of
13 1935 (15 U.S.C. 79 et seq.).

14 **SEC. 1275. SERVICE ALLOCATION.**

15 (a) FERC REVIEW.—In the case of non-power goods
16 or administrative or management services provided by an
17 associate company organized specifically for the purpose
18 of providing such goods or services to any public utility
19 in the same holding company system, at the election of
20 the system or a State commission having jurisdiction over
21 the public utility, the Commission, after the effective date
22 of this subtitle, shall review and authorize the allocation
23 of the costs for such goods or services to the extent rel-
24 evant to that associate company in order to assure that



1 each allocation is appropriate for the protection of inves-
2 tors and consumers of such public utility.

3 (b) COST ALLOCATION.—Nothing in this section shall
4 preclude the Commission or a State commission from exer-
5 cising its jurisdiction under other applicable law with re-
6 spect to the review or authorization of any costs allocated
7 to a public utility in a holding company system located
8 in the affected State as a result of the acquisition of non-
9 power goods or administrative and management services
10 by such public utility from an associate company orga-
11 nized specifically for that purpose.

12 (c) RULES.—Not later than 6 months after the date
13 of enactment of this Act, the Commission shall issue rules
14 (which rules shall be effective no earlier than the effective
15 date of this subtitle) to exempt from the requirements of
16 this section any company in a holding company system
17 whose public utility operations are confined substantially
18 to a single State and any other class of transactions that
19 the Commission finds is not relevant to the jurisdictional
20 rates of a public utility.

21 (d) PUBLIC UTILITY.—As used in this section, the
22 term “public utility” has the meaning given that term in
23 section 201(e) of the Federal Power Act.



1 **SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such funds
3 as may be necessary to carry out this subtitle.

4 **SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL**
5 **POWER ACT.**

6 (a) CONFLICT OF JURISDICTION.—Section 318 of the
7 Federal Power Act (16 U.S.C. 825q) is repealed.

8 (b) DEFINITIONS.—(1) Section 201(g)(5) of the Fed-
9 eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-
10 ing “1935” and inserting “2005”.

11 (2) Section 214 of the Federal Power Act (16 U.S.C.
12 824m) is amended by striking “1935” and inserting
13 “2005”.

14 **Subtitle G—Market Transparency,**
15 **Enforcement, and Consumer**
16 **Protection**

17 **SEC. 1281. MARKET TRANSPARENCY RULES.**

18 Part II of the Federal Power Act (16 U.S.C. 824 et
19 seq.) is amended by adding at the end the following:

20 **“SEC. 220. MARKET TRANSPARENCY RULES.**

21 “(a) IN GENERAL.—Not later than 180 days after
22 the date of enactment of this section, the Commission
23 shall issue rules establishing an electronic information sys-
24 tem to provide the Commission and the public with access
25 to such information as is necessary or appropriate to fa-
26 cilitate price transparency and participation in markets



1 subject to the Commission's jurisdiction under this Act.
2 Such systems shall provide information about the avail-
3 ability and market price of wholesale electric energy and
4 transmission services to the Commission, State commis-
5 sions, buyers and sellers of wholesale electric energy, users
6 of transmission services, and the public on a timely basis.
7 The Commission shall have authority to obtain such infor-
8 mation from any electric utility or transmitting utility, in-
9 cluding any entity described in section 201(f).

10 “(b) EXEMPTIONS.—The Commission shall exempt
11 from disclosure information it determines would, if dis-
12 closed, be detrimental to the operation of an effective mar-
13 ket or jeopardize system security. This section shall not
14 apply to transactions for the purchase or sale of wholesale
15 electric energy or transmission services within the area de-
16 scribed in section 212(k)(2)(A). In determining the infor-
17 mation to be made available under this section and time
18 to make such information available, the Commission shall
19 seek to ensure that consumers and competitive markets
20 are protected from the adverse effects of potential collu-
21 sion or other anti-competitive behaviors that can be facili-
22 tated by untimely public disclosure of transaction-specific
23 information.

24 “(c) COMMODITY FUTURES TRADING COMMIS-
25 SION.—This section shall not affect the exclusive jurisdic-



1 tion of the Commodity Futures Trading Commission with
2 respect to accounts, agreements, contracts, or transactions
3 in commodities under the Commodity Exchange Act (7
4 U.S.C. 1 et seq.). Any request for information to a des-
5 igned contract market, registered derivatives transaction
6 execution facility, board of trade, exchange, or market in-
7 volving accounts, agreements, contracts, or transactions in
8 commodities (including natural gas, electricity and other
9 energy commodities) within the exclusive jurisdiction of
10 the Commodity Futures Trading Commission shall be di-
11 rected to the Commodity Futures Trading Commission.

12 “(d) SAVINGS PROVISION.—In exercising its author-
13 ity under this section, the Commission shall not—

14 “(1) compete with, or displace from the market
15 place, any price publisher; or

16 “(2) regulate price publishers or impose any re-
17 quirements on the publication of information.”.

18 **SEC. 1282. MARKET MANIPULATION.**

19 Part II of the Federal Power Act (16 U.S.C. 824 et
20 seq.) is amended by adding at the end the following:

21 **“SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

22 “No person or other entity (including an entity de-
23 scribed in section 201(f)) shall willfully and knowingly re-
24 port any information relating to the price of electricity
25 sold at wholesale or availability of transmission capacity,



1 which information the person or any other entity knew to
2 be false at the time of the reporting, to a Federal agency
3 with intent to fraudulently affect the data being compiled
4 by such Federal agency.

5 **“SEC. 222. PROHIBITION ON ROUND TRIP TRADING.**

6 “(a) PROHIBITION.—No person or other entity (in-
7 cluding an entity described in section 201(f)) shall willfully
8 and knowingly enter into any contract or other arrange-
9 ment to execute a ‘round trip trade’ for the purchase or
10 sale of electric energy at wholesale.

11 “(b) DEFINITION.—For the purposes of this section,
12 the term ‘round trip trade’ means a transaction, or com-
13 bination of transactions, in which a person or any other
14 entity—

15 “(1) enters into a contract or other arrange-
16 ment to purchase from, or sell to, any other person
17 or other entity electric energy at wholesale;

18 “(2) simultaneously with entering into the con-
19 tract or arrangement described in paragraph (1), ar-
20 ranges a financially offsetting trade with such other
21 person or entity for the same such electric energy,
22 at the same location, price, quantity and terms so
23 that, collectively, the purchase and sale transactions
24 in themselves result in no financial gain or loss; and



1 “(3) enters into the contract or arrangement
2 with a specific intent to fraudulently affect reported
3 revenues, trading volumes, or prices.”.

4 **SEC. 1283. ENFORCEMENT.**

5 (a) COMPLAINTS.—Section 306 of the Federal Power
6 Act (16 U.S.C. 825e) is amended as follows:

7 (1) By inserting “electric utility,” after “Any
8 person,”.

9 (2) By inserting “, transmitting utility,” after
10 “licensee” each place it appears.

11 (b) REVIEW OF COMMISSION ORDERS.—Section
12 313(a) of the Federal Power Act (16 U.S.C. 8251) is
13 amended by inserting “electric utility,” after “person,” in
14 the first 2 places it appears and by striking “any person
15 unless such person” and inserting “any entity unless such
16 entity”.

17 (c) INVESTIGATIONS.—Section 307(a) of the Federal
18 Power Act (16 U.S.C. 825f(a)) is amended as follows:

19 (1) By inserting “, electric utility, transmitting
20 utility, or other entity” after “person” each time it
21 appears.

22 (2) By striking the period at the end of the
23 first sentence and inserting the following: “or in ob-
24 taining information about the sale of electric energy



1 at wholesale in interstate commerce and the trans-
2 mission of electric energy in interstate commerce.”.

3 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-
4 eral Power Act (16 U.S.C. 825o) is amended—

5 (1) in subsection (a), by striking “\$5,000” and
6 inserting “\$1,000,000”, and by striking “two years”
7 and inserting “5 years”;

8 (2) in subsection (b), by striking “\$500” and
9 inserting “\$25,000”; and

10 (3) by striking subsection (c).

11 (e) CIVIL PENALTIES.—Section 316A of the Federal
12 Power Act (16 U.S.C. 825o–1) is amended as follows:

13 (1) In subsections (a) and (b), by striking “sec-
14 tion 211, 212, 213, or 214” each place it appears
15 and inserting “Part II”.

16 (2) In subsection (b), by striking “\$10,000”
17 and inserting “\$1,000,000”.

18 **SEC. 1284. REFUND EFFECTIVE DATE.**

19 Section 206(b) of the Federal Power Act (16 U.S.C.
20 824e(b)) is amended as follows:

21 (1) By striking “the date 60 days after the fil-
22 ing of such complaint nor later than 5 months after
23 the expiration of such 60-day period” in the second
24 sentence and inserting “the date of the filing of such



1 complaint nor later than 5 months after the filing of
2 such complaint”.

3 (2) By striking “60 days after” in the third
4 sentence and inserting “of”.

5 (3) By striking “expiration of such 60-day pe-
6 riod” in the third sentence and inserting “publica-
7 tion date”.

8 (4) By striking the fifth sentence and inserting
9 the following: “If no final decision is rendered by the
10 conclusion of the 180-day period commencing upon
11 initiation of a proceeding pursuant to this section,
12 the Commission shall state the reasons why it has
13 failed to do so and shall state its best estimate as
14 to when it reasonably expects to make such deci-
15 sion.”.

16 **SEC. 1285. REFUND AUTHORITY.**

17 Section 206 of the Federal Power Act (16 U.S.C.
18 824e) is amended by adding the following new subsection
19 at the end thereof:

20 “(e)(1) Except as provided in paragraph (2), if an
21 entity described in section 201(f) voluntarily makes a
22 short-term sale of electric energy and the sale violates
23 Commission rules in effect at the time of the sale, such
24 entity shall be subject to the Commission’s refund author-
25 ity under this section with respect to such violation.



1 “(2) This section shall not apply to—

2 “(A) any entity that sells less than 8,000,000
3 megawatt hours of electricity per year; or

4 “(B) any electric cooperative.

5 “(3) For purposes of this subsection, the term ‘short-
6 term sale’ means an agreement for the sale of electric en-
7 ergy at wholesale in interstate commerce that is for a pe-
8 riod of 31 days or less (excluding monthly contracts sub-
9 ject to automatic renewal).

10 “(4) The Commission shall have refund authority
11 under subsection (e)(1) with respect to a voluntary short-
12 term sale of electric energy by the Bonneville Power Ad-
13 ministration (in this section ‘Bonneville’) only if the sale
14 is at an unjust and unreasonable rate and, in that event,
15 may order a refund only for short-term sales made by
16 Bonneville at rates that are higher than the highest just
17 and reasonable rate charged by any other entity for a
18 short-term sale of electric energy in the same geographic
19 market for the same, or most nearly comparable, period
20 as the sale by Bonneville.

21 “(5) With respect to any Federal power marketing
22 agency or the Tennessee Valley Authority, the Commission
23 shall not assert or exercise any regulatory authority or
24 powers under subsection (e)(1) other than the ordering of
25 refunds to achieve a just and reasonable rate.”.



1 **SEC. 1286. SANCTITY OF CONTRACT.**

2 (a) IN GENERAL.—The Federal Energy Regulatory
3 Commission (in this section, “the Commission”) shall have
4 no authority to abrogate or modify any provision of an
5 executed contract or executed contract amendment de-
6 scribed in subsection (b) that has been entered into or
7 taken effect, except upon a finding that failure to take
8 such action would be contrary to the public interest.

9 (b) LIMITATION.—Except as provided in subsection
10 (c), this section shall apply only to a contract or contract
11 amendment—

12 (1) executed on or after the date of enactment
13 of this Act; and

14 (2) entered into—

15 (A) for the purchase or sale of electric en-
16 ergy under section 205 of the Federal Power
17 Act (16 U.S.C. 824d) where the seller has been
18 authorized by the Commission to charge mar-
19 ket-based rates; or

20 (B) under section 4 of the Natural Gas
21 Act (15 U.S.C. 717c) where the natural gas
22 company has been authorized by the Commis-
23 sion to charge market-based rates for the serv-
24 ice described in the contract.

25 (c) EXCLUSION.—This section shall not apply to an
26 executed contract or executed contract amendment that



1 expressly provides for a standard of review other than the
2 public interest standard.

3 (d) SAVINGS PROVISION.—With respect to contracts
4 to which this section does not apply, nothing in this sec-
5 tion alters existing law regarding the applicable standard
6 of review for a contract subject to the jurisdiction of the
7 Commission.

8 **SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**
9 **TICES.**

10 (a) PRIVACY.—The Federal Trade Commission may
11 issue rules protecting the privacy of electric consumers
12 from the disclosure of consumer information obtained in
13 connection with the sale or delivery of electric energy to
14 electric consumers.

15 (b) SLAMMING.—The Federal Trade Commission
16 may issue rules prohibiting the change of selection of an
17 electric utility except with the informed consent of the
18 electric consumer or if approved by the appropriate State
19 regulatory authority.

20 (c) CRAMMING.—The Federal Trade Commission
21 may issue rules prohibiting the sale of goods and services
22 to an electric consumer unless expressly authorized by law
23 or the electric consumer.

24 (d) RULEMAKING.—The Federal Trade Commission
25 shall proceed in accordance with section 553 of title 5,



1 United States Code, when prescribing a rule under this
2 section.

3 (e) STATE AUTHORITY.—If the Federal Trade Com-
4 mission determines that a State’s regulations provide
5 equivalent or greater protection than the provisions of this
6 section, such State regulations shall apply in that State
7 in lieu of the regulations issued by the Commission under
8 this section.

9 (f) DEFINITIONS.—For purposes of this section:

10 (1) STATE REGULATORY AUTHORITY.—The
11 term “State regulatory authority” has the meaning
12 given that term in section 3(21) of the Federal
13 Power Act (16 U.S.C. 796(21)).

14 (2) ELECTRIC CONSUMER AND ELECTRIC UTIL-
15 ITY.—The terms “electric consumer” and “electric
16 utility” have the meanings given those terms in sec-
17 tion 3 of the Public Utility Regulatory Policies Act
18 of 1978 (16 U.S.C. 2602).

19 **Subtitle H—Merger Reform**

20 **SEC. 1291. MERGER REVIEW REFORM AND ACCOUNT-**
21 **ABILITY.**

22 (a) MERGER REVIEW REFORM.—Within 180 days
23 after the date of enactment of this Act, the Secretary of
24 Energy, in consultation with the Federal Energy Regu-
25 latory Commission and the Attorney General of the United



1 States, shall prepare, and transmit to Congress each of
2 the following:

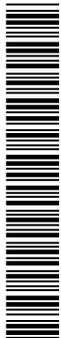
3 (1) A study of the extent to which the authori-
4 ties vested in the Federal Energy Regulatory Com-
5 mission under section 203 of the Federal Power Act
6 are duplicative of authorities vested in—

7 (A) other agencies of Federal and State
8 Government; and

9 (B) the Federal Energy Regulatory Com-
10 mission, including under sections 205 and 206
11 of the Federal Power Act.

12 (2) Recommendations on reforms to the Fed-
13 eral Power Act that would eliminate any unneces-
14 sary duplication in the exercise of regulatory author-
15 ity or unnecessary delays in the approval (or dis-
16 approval) of applications for the sale, lease, or other
17 disposition of public utility facilities.

18 (b) MERGER REVIEW ACCOUNTABILITY.—Not later
19 than 1 year after the date of enactment of this Act and
20 annually thereafter, with respect to all orders issued with-
21 in the preceding year that impose a condition on a sale,
22 lease, or other disposition of public utility facilities under
23 section 203(b) of the Federal Power Act, the Federal En-
24 ergy Regulatory Commission shall transmit a report to
25 Congress explaining each of the following:



1 (1) The condition imposed.

2 (2) Whether the Commission could have im-
3 posed such condition by exercising its authority
4 under any provision of the Federal Power Act other
5 than under section 203(b).

6 (3) If the Commission could not have imposed
7 such condition other than under section 203(b), why
8 the Commission determined that such condition was
9 consistent with the public interest.

10 **SEC. 1292. ELECTRIC UTILITY MERGERS.**

11 (a) AMENDMENT.—Section 203(a) of the Federal
12 Power Act (16 U.S.C. 824b(a)) is amended to read as fol-
13 lows:

14 “(a)(1) No public utility shall, without first having
15 secured an order of the Commission authorizing it to do
16 so—

17 “(A) sell, lease, or otherwise dispose of the
18 whole of its facilities subject to the jurisdiction of
19 the Commission, or any part thereof of a value in
20 excess of \$10,000,000;

21 “(B) merge or consolidate, directly or indi-
22 rectly, such facilities or any part thereof with those
23 of any other person, by any means whatsoever; or



1 “(C) purchase, acquire, or take any security
2 with a value in excess of \$10,000,000 of any other
3 public utility.

4 “(2) No holding company in a holding company sys-
5 tem that includes a public utility shall purchase, acquire,
6 or take any security with a value in excess of \$10,000,000
7 of, or, by any means whatsoever, directly or indirectly,
8 merge or consolidate with, a public utility or a holding
9 company in a holding company system that includes a
10 public utility with a value in excess of \$10,000,000 with-
11 out first having secured an order of the Commission au-
12 thorizing it to do so.

13 “(3) Upon receipt of an application for such approval
14 the Commission shall give reasonable notice in writing to
15 the Governor and State commission of each of the States
16 in which the physical property affected, or any part there-
17 of, is situated, and to such other persons as it may deem
18 advisable.

19 “(4) After notice and opportunity for hearing, the
20 Commission shall approve the proposed disposition, con-
21 solidation, acquisition, or change in control, if it finds that
22 the proposed transaction will be consistent with the public
23 interest. In evaluating whether a transaction will be con-
24 sistent with the public interest, the Commission shall con-
25 sider whether the proposed transaction—



1 “(A) will adequately protect consumer interests;

2 “(B) will be consistent with competitive whole-
3 sale markets;

4 “(C) will impair the financial integrity of any
5 public utility that is a party to the transaction or an
6 associate company of any party to the transaction;
7 and

8 “(D) satisfies such other criteria as the Com-
9 mission considers consistent with the public interest.

10 “(5) The Commission shall, by rule, adopt procedures
11 for the expeditious consideration of applications for the
12 approval of dispositions, consolidations, or acquisitions
13 under this section. Such rules shall identify classes of
14 transactions, or specify criteria for transactions, that nor-
15 mally meet the standards established in paragraph (4).
16 The Commission shall provide expedited review for such
17 transactions. The Commission shall grant or deny any
18 other application for approval of a transaction not later
19 than 180 days after the application is filed. If the Com-
20 mission does not act within 180 days, such application
21 shall be deemed granted unless the Commission finds,
22 based on good cause, that further consideration is required
23 to determine whether the proposed transaction meets the
24 standards of paragraph (4) and issues an order tolling the
25 time for acting on the application for not more than 180



1 days, at the end of which additional period the Commis-
2 sion shall grant or deny the application.

3 “(6) For purposes of this subsection, the terms ‘asso-
4 ciate company’, ‘holding company’, and ‘holding company
5 system’ have the meaning given those terms in the Public
6 Utility Holding Company Act of 2005.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect 12 months after the date of
9 enactment of this section.

10 **Subtitle I—Definitions**

11 **SEC. 1295. DEFINITIONS.**

12 (a) ELECTRIC UTILITY.—Section 3(22) of the Fed-
13 eral Power Act (16 U.S.C. 796(22)) is amended to read
14 as follows:

15 “(22) ELECTRIC UTILITY.—The term ‘electric
16 utility’ means any person or Federal or State agency
17 (including any entity described in section 201(f))
18 that sells electric energy; such term includes the
19 Tennessee Valley Authority and each Federal power
20 marketing administration.”.

21 (b) TRANSMITTING UTILITY.—Section 3(23) of the
22 Federal Power Act (16 U.S.C. 796(23)) is amended to
23 read as follows:

24 “(23) TRANSMITTING UTILITY.—The term
25 ‘transmitting utility’ means an entity, including any



1 entity described in section 201(f), that owns, oper-
2 ates, or controls facilities used for the transmission
3 of electric energy—

4 “(A) in interstate commerce; or

5 “(B) for the sale of electric energy at
6 wholesale.”.

7 (c) ADDITIONAL DEFINITIONS.—Section 3 of the
8 Federal Power Act (16 U.S.C. 796) is amended by adding
9 at the end the following:

10 “(26) ELECTRIC COOPERATIVE.—The term
11 ‘electric cooperative’ means a cooperatively owned
12 electric utility.

13 “(27) RTO.—The term ‘Regional Transmission
14 Organization’ or ‘RTO’ means an entity of sufficient
15 regional scope approved by the Commission to exer-
16 cise operational or functional control of facilities
17 used for the transmission of electric energy in inter-
18 state commerce and to ensure nondiscriminatory ac-
19 cess to such facilities.

20 “(28) ISO.—The term ‘Independent System
21 Operator’ or ‘ISO’ means an entity approved by the
22 Commission to exercise operational or functional
23 control of facilities used for the transmission of elec-
24 tric energy in interstate commerce and to ensure
25 nondiscriminatory access to such facilities.”.



1 (d) COMMISSION.—For the purposes of this title, the
2 term “Commission” means the Federal Energy Regu-
3 latory Commission.

4 (e) APPLICABILITY.—Section 201(f) of the Federal
5 Power Act (16 U.S.C. 824(f)) is amended by adding after
6 “political subdivision of a state,” the following: “an elec-
7 tric cooperative that has financing under the Rural Elec-
8 trification Act of 1936 (7 U.S.C. 901 et seq.) or that sells
9 less than 4,000,000 megawatt hours of electricity per
10 year.”.

11 **Subtitle J—Technical and** 12 **Conforming Amendments**

13 **SEC. 1297. CONFORMING AMENDMENTS.**

14 The Federal Power Act is amended as follows:

15 (1) Section 201(b)(2) of such Act (16 U.S.C.
16 824(b)(2)) is amended as follows:

17 (A) In the first sentence by striking “210,
18 211, and 212” and inserting “203(a)(2),
19 206(e), 210, 211, 211A, 212, 215, 216, 217,
20 218, 219, 220, 221, and 222”.

21 (B) In the second sentence by striking
22 “210 or 211” and inserting “203(a)(2), 206(e),
23 210, 211, 211A, 212, 215, 216, 217, 218, 219,
24 220, 221, and 222”.



1 (C) Section 201(b)(2) of such Act is
2 amended by striking “The” in the first place it
3 appears and inserting “Notwithstanding section
4 201(f), the” and in the second sentence after
5 “any order” by inserting “or rule”.

6 (2) Section 201(e) of such Act is amended by
7 striking “210, 211, or 212” and inserting “206(e),
8 206(f), 210, 211, 211A, 212, 215, 216, 217, 218,
9 219, 220, 221, and 222”.

10 (3) Section 206 of such Act (16 U.S.C. 824e)
11 is amended as follows:

12 (A) In subsection (b), in the seventh sen-
13 tence, by striking “the public utility to make”.

14 (B) In the first sentence of subsection (a),
15 by striking “hearing had” and inserting “hear-
16 ing held”.

17 (4) Section 211(c) of such Act (16 U.S.C.
18 824j(c)) is amended by—

19 (A) striking “(2)”;

20 (B) striking “(A)” and inserting “(1)”

21 (C) striking “(B)” and inserting “(2)”;

22 and

23 (D) striking “termination of modification”
24 and inserting “termination or modification”.



1 (5) Section 211(d)(1) of such Act (16 U.S.C.
2 824j(d)(1)) is amended by striking “electric utility”
3 the second time it appears and inserting “transmit-
4 ting utility”.

5 (6) Section 315 (c) of such Act (16 U.S.C.
6 825n(e)) is amended by striking “subsection” and
7 inserting “section”.

